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EXPOSURE DRAFT

Uniform

Accountancy Act

and

Uniform

Accountancy Act Rules

Second Third Edition, Revised

Standards for Regulation Including
Substantial Equivalency

Published jointly by the
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and
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Note: Material being deleted is striken. New material is underlined.

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EXPOSURE DRAFT OF UNIFORM ACCOUNTANCY ACT AND UNIFORM ACCOUNTANCY RULES

This exposure draft contains revisions to the UAA which are designed to incorporate the recommendations of the AICPA/NASBA Joint Committee on Regulation of the Profession. In the draft, new material is underlined and strike throughs show the material that is being replaced.

The revisions in the draft cover a wide range of issues including the new substantial equivalency standard. The draft also makes changes in a number of areas such as; the experience requirement, the attest function, ownership of CPA firms, commissions and contingent fees, CPE, inactive status and safe harbor language for use by non licensees.

The AICPA and NASBA committees that developed the exposure draft welcome your comments on the revisions. The exposure period will end on September 5, 1997. Please send your comments to:

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Foreword

This *UAA* and *Uniform Accountancy Act Rules* was approved for publication by the Boards of Directors of the American Institute of Certified Public Accountants (AICPA) and the National Association of State Boards of Accountancy (NASBA).

~~July 1994~~, 1997

If you have any questions concerning the Act, please contact the following:

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Uniform

Accountancy

Act

American Institute of Certified Public Accountants

National Association of State Boards of Accountancy

Preface

The modern public accounting profession originated in Great Britain during the latter half of the nineteenth century. In 1896 the New York state legislature passed the first law creating the title "certified public accountant," thereby setting the pattern for state government regulation of the Public Accounting profession in the United States.

As with other professions, the public accounting profession is built upon a statutory foundation providing for the examination and licensing of members of the profession, and for the regulation of their professional conduct. All CPAs are examined, licensed, and regulated under state accountancy laws, and there is such a law in every American jurisdiction.

A model bill to regulate the practice of public accountancy was first published in 1916 by the American Institute of Accountants, the predecessor of the American Institute of Certified Public Accountants (AICPA), the national membership organization of certified public accountants. In 1984, the AICPA and NASBA published the first joint model bill, later renamed the Uniform Accountancy Act (UAA). A substantial majority of the state accountancy laws now in force follow, in their principal provisions, the example provided by AICPA earlier model accountancy bills and Uniform Act.

~~The National Association of State Boards of Accountancy (NASBA) in April 1980 published a Model Public Accountancy Act reflecting legislative policies that had been worked out over the course of a number of years. It was appropriate that NASBA develop legislative policies because its members, the individual state boards, which have responsibility for administering existing laws, are often called upon to make recommendations to the state legislatures with regard to possible amendments to such laws, both in connection with "Sunset Law" reviews and otherwise.~~

~~In January 1983, a Committee of AICPA and NASBA was formed and charged with combining and harmonizing, to the extent possible, the models separately developed by the AICPA and NASBA, so that a single bill could be jointly issued by both organizations. The 1984 Model Public Accountancy Bill was the result of that effort. It was intended as a forward-looking document, with provisions that both the public accounting profession and the general public could support. The 1992 edition of the Model Bill was renamed the Uniform Accountancy Act and was designed to update the 1984 Model Bill by revising several sections to reflect current standards with regard to issues such as education and to address other current issues such as tort reform. It was developed by the AICPA and NASBA after review of recommendations by committees within those two organizations, suggestions by state boards and state societies and after reviewing comments from numerous other groups and individuals.~~

A joint working group made up of representatives from the AICPA's State Legislation Committee and from NASBA's Uniform Accountancy Act Committee was formed to make changes which were

incorporated into the 1992 Uniform Accountancy Act. That group has continued to develop the language for revisions to the UAA, including those found in this edition.

While past joint efforts at promoting high professional standards, protecting the public and increasing uniformity of regulation have been important, they have not produced the level of results either organization feels is satisfactory. This coupled with other significant factors occurring in the global marketplace for accounting services, led both AICPA and NASBA to begin to examine new ways to respond in this area. The AICPA, through the work of the Special Committee on Regulation and Structure (Mingle Committee) and NASBA through its Reciprocity Committee and Future Licensing, Litigation and Legislation Committee, each began to explore new regulatory concepts and approaches that would be responsive to the challenges to the current regulatory system.

In March 1996, the Joint Committee on Regulation of the Profession (Joint Committee) was formed by AICPA and NASBA to share the concepts and ideas of each organization's committees and to work to develop consensus on some significant new regulatory changes for the future. The members of the Joint Committee are leaders of AICPA and NASBA, as well as the state board administrators group and the Certified Public Accountants' Society Executives Association (CPA/SEA). After a year of meetings and discussions, the Joint Committee reached agreement on a new regulatory framework that it believes will: enhance interstate reciprocity and practice across state lines by CPAs, meet the future needs of the profession, respond to the marketplace and, most importantly, protect the public that the profession serves. The Joint Committee's recommendations were approved by AICPA and NASBA leadership and have been incorporated into this edition of the Uniform Accountancy Act. This edition of the UAA is intended to continue the process of updating the Act and to add Uniform Accountancy Rules to assist states seeking to implement the Act's provisions.

This printing of the Act is intended to further simplify the revision process. For that reason it has been provided to state boards and state societies in a looseleaf binder.

Differing requirements for CPA certification, reciprocity, temporary practice, and other aspects of state accountancy legislation in the fifty-four American licensing jurisdictions (the fifty states, Puerto Rico, the District of Columbia, the U.S. Virgin Islands, and Guam) constitute artificial barriers to the interstate practice and mobility of certified public accountants. The Uniform Act seeks to eliminate such differences and the barriers that they pose to effective practice of ~~public accountancy~~ CPAs under modern conditions through the new standard of "substantial equivalency" that has been added to the Act.

Many of the organizations requiring the professional services of certified public accountants transact business on an interstate, and even on an international, basis; as a result, the practice of ~~public accountancy~~ CPAs typically extends across state lines, and often, international boundaries as well. Thus, there is compelling need for the enactment of uniform state accountancy laws that foster rather than inhibit interstate professional practice and for laws that provide appropriately for international practice.

~~The~~ This Uniform Act ~~here offered~~ is ~~drafted~~ provided as a single comprehensive piece of legislation that could be adopted in place of existing public state accountancy laws. Because there is an accountancy law now in effect in every jurisdiction, however, the Uniform Act is also designed to the extent possible with separable provisions, so that particular parts of this Act could, with appropriate amendments, be added to existing laws instead of replacing such laws entirely. In the interest of uniformity and to promote mobility through the substantial equivalency standard, the AICPA and NASBA strongly urge states to adopt the entire Act.

The Uniform Act reflects applicable AICPA and NASBA legislative policies. The principal AICPA legislative policy, as approved by its governing Council, is set out (in annotated form) in Appendix A. Appendix B contains the Standards of NASBA's National Registry of CPE Sponsors Statement on Standards for Continuing Professional Education (CPE) Programs approved by AICPA and NASBA. Appendix C sets out guidelines as to the substantial equivalency standard.

The Uniform Accountancy Act is designed to achieve several objectives. As the name of the Act suggests, the Act advances the goal of uniformity. In addition, the Act's provisions protect the public interest and promote high professional standards.

~~Others who request copies of the Act will receive a photocopy.~~ With respect to this edition, pages are dated so that in the future individual provisions can be revised without the necessity of reprinting the entire Act. Pages are numbered to correspond to sections and rules.

Introductory Comments

The Fundamental Principles That Should Govern the Regulation of ~~Public Accountancy~~ Certified Public Accountants¹

The fundamental principles of the AICPA's and NASBA's legislative policies, and of the resulting Uniform Act, are few, and can be simply stated.

First, statutory regulation of ~~public accountancy~~ CPAs, as of any other profession or occupation, is justified only by considerations of the public interest. The public interest must be a substantial one, since regulation necessarily involves restrictions on who can ~~practice public accountancy~~ perform certain services and the manner in which ~~it is practiced~~ they are performed. The conventional formulation is that regulatory legislation must be reasonably designed to protect the public health, safety, or welfare; the practice of ~~public accountancy~~ CPAs has a significant impact on the public welfare.

Second, appropriately designed regulation of ~~public accountancy~~ CPAs serves to protect the public welfare in two principal ways: (a) by providing reasonable assurance of competence on the part of persons and entities that perform those services that require a substantial degree of skill and competence for proper performance and regarding which the consequences of inadequate performance may be of serious dimension; and (b) by preventing deception of the public regarding the level of competence that may reasonably be expected of a given practitioner. A central element in the protection of the public welfare through the regulation of ~~public accountancy~~ CPAs is prevention of circumstances in which persons who are not themselves in a position to judge the competence of a particular practitioner or the reliability of particular financial information may be induced to rely on assurances of such competence or reliability (explicit or implied) that are not reasonably supported in fact. Third-party reliance--reliance by persons not themselves clients of the certified public accountants whose professional work is relied on--is characteristic an example of ~~public accountancy, giving particular force to the need for its regulation~~ regulating CPAs in the public interest.

Third, although an expectation of some minimal level of competence is involved when a person or entity is engaged to perform services for hire, whatever the services may be, the degree to which such an expectation involves a substantial public interest and, in consequence, the degree to which it justifies legal regulation, varies significantly with both the level of skill required for adequate performance of the service, and the range and severity of adverse consequences that may derive from inadequate performance. Among the many different professional services ~~included in the practice of~~ public accountancy that CPAs perform, one is, to a far greater degree than any other, affected by considerations of competence, namely, the expression of formal professional opinions upon financial statements--familiarily known as the audit attest function service.

¹Including licensed public accountants

Not only does the expression of opinions on financial statements call for the greatest breadth and most intense development of the professional skills employed ~~in the practice of public accountancy by CPAs~~, but it invites the highest degree of reliance by the widest segment of the public. When ~~auditing attest~~ services are not competently and properly performed, the breadth and severity of the possible adverse consequences are far greater than those attendant upon other ~~public accountancy services performed by CPAs~~. For these reasons, the keystone of the Uniform Act is reservation of attest services including the audit function to licensees who have demonstrated qualifications to perform attest services. ~~The Uniform Act does not include provisions for licensing any other class of practitioner than those who have demonstrated their qualifications to perform the audit function.~~

A professional service similar in nature to the audit function, although differing in the level of assurance implied, is the conduct of "reviews" of financial statements and the issuance of reports upon such reviews. Formal standards have been promulgated by the AICPA in a series of Statements on Standards for Accounting and Review Services (SSARS), and reviews conducted in accordance with such standards may call upon the same level of knowledge as does an audit. Although the degree of assurance (explicit and implied) in reports upon reviews purporting to comply with the AICPA's formal standards is less than that expressed and implied by reports represented to be based upon an audit, the issuance of such reports is restricted to persons who have demonstrated the qualifications necessary to perform the audit function.

Still another professional service, founded on the same array of skills and the same level of knowledge as audits, but not involving any explicit assurance, is the issuance of reports on "compilations" of financial statements. Again, formal standards have been promulgated in the SSARS pronouncements for the conduct of such compilations and for reports thereon. A danger of innocent reliance on the implicit representations of skill and assurances of reliability of such reports exists if they are issued by persons not having the professional qualifications that such reports imply.

Also included in attest services for this purpose, because of the public's reliance, is an important service defined in the statement on Standards for Attestation Engagements (SSAE), examination of prospective financial information. The skills necessary to perform such services are at least as demanding as the level of knowledge necessary to perform the audit process.

Accordingly, this Uniform Act extends the definition and reservation of ~~the audit function~~ attest services to include ~~the issuance of reports on~~ both reviews and compilations of financial statements and the examination of prospective financial information when the reports on those services reports are in standard form, and prescribed by authoritative pronouncements, so as to imply assurances and the professional qualifications underlying such assurances.

Fourth, the requirements for licensing persons to perform the professional services thus reserved should be designed to provide significant assurance that those who undertake to perform such services have at least a minimum level of professional qualification for adequate performance. Two means are commonly employed to provide this kind of assurance of competence (not only with respect to the ~~public accounting~~ CPA profession, but other professions as well): (a) reserve the

performance of the services in question to persons licensed to do so; and (b) require, as a condition of such licensing, demonstration of skill and knowledge, typically by means of examinations, education requirements; and, ~~in some instances,~~ experience requirements. Uniformity of the required demonstration of skill and competence among licensees within a given state and those of different states is obviously desirable from the public interest point of view. ~~Nevertheless, in~~ the interest of equity, legislatures of most jurisdictions have made provisions for "grandfathering" persons who, though they had not met the requirements for issuance of a certificate as certified public accountant, were nonetheless engaged in unregulated ~~audit work~~ attest services when the licensing law became effective. Because relatively few jurisdictions exist without "grandfathering" provisions, this Uniform Act does not include a provision for a new "grandfathered" entitlement to perform ~~the audit function~~ attest services. It does, however, contain provisions to deal with such a class of public accountants where the prior law established such a class.

Fifth, an effective regulatory plan will also prohibit persons who have not met the licensing requirements from representing to the public that they have done so, thus protecting the public against incompetence and deception. Provisions should be designed to prevent would-be practitioners from representing to the public, directly or indirectly, that they have a higher degree of competence than they in fact command.

Sixth, the need to assure the public of reasonable competence and the need to protect the public against deception combine to support regulation of the conduct of ~~persons who have been licensed for the audit function~~ all licensees, even in their performance of non-audit attest work; which unlicensed persons may also perform. If a given person has demonstrated the high level of competence required for licensure, even though the license has its central justification and purpose in the performance of ~~the audit function~~ attest services, nonetheless the qualifications required to be demonstrated in order to merit such a license will reasonably support public expectations that the licensee has special competence and higher professional conduct in other areas of practice as well and that the licensee adheres to a higher level of professional conduct than unlicensed persons. Such a reasonable expectation of special competence in other areas than the one for which a license is specifically required calls for regulation of the professional conduct of all licensees ~~in all of the areas to which such an expectation applies~~ who promote themselves to the public as such.

Seventh, the need to assure the public of reasonable competence supports the requirement that all ~~certificate holders, including those not in public practice,~~ licensees maintain professional competence in their area of responsibility through continuing professional education. ~~Also, the public interest demands that those not in public practice take continuing professional education because they may return to public practice.~~ The provisions for such education should provide for wide latitude in selection of continuing education ~~courses~~ and should prescribe full credit for any course or program that contributes to the general professional competence of the licensee.

Eighth, and finally, it is desirable that there be, to the maximum extent feasible, uniformity among jurisdictions with regard to those aspects of the regulatory structure that bear upon the qualifications required of licensees. Because many of the clients ~~for public accountancy services~~ or employers of

CPAs are multistate enterprises, much of the practice of ~~public accountancy~~ CPAs has an interstate character; consequently, ~~practitioners~~ CPAs must be able to move freely between states. The need for interstate mobility and maintenance of high minimum standards of competence in the public interest requires uniform licensing qualifications, insofar as possible, among the states.

Ninth, and finally, it is essential that mobility for CPAs be enhanced. With respect to the goal of portability of the CPA designation and mobility of CPAs across state lines, the cornerstone of the approach recommended by this Act is the standard of “substantial equivalency” set out in Section 23. Under substantial equivalency, a CPA’s ability to obtain reciprocity would be simplified and they would have the right to practice in another state without the need to obtain an additional license in that state unless it is where their principal place of employment is located, as determined by the licensee. Individuals would not be denied reciprocity or practice rights because of minor or immaterial differences in the requirements for CPA certification from state-to-state.

Substantial equivalency is a determination by the Board of Accountancy, or NASBA, that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed, the education, examination and experience requirements contained in the Uniform Accountancy Act. If the state of licensure does not meet the substantial equivalency standard, individual CPAs may demonstrate that they personally have education, examination and experience qualifications that are comparable to or exceed those in the Uniform Accountancy Act.

For purposes of practice rights and reciprocity, an applicant that has an active certificate as a certified public accountant from any jurisdiction that has obtained from the Board of Accountancy or NASBA a determination of substantial equivalency with the Uniform Accountancy Act’s CPA certificate requirements shall be presumed to have qualifications substantially equivalent to this jurisdiction’s. Individual CPAs from states that are not substantially equivalent may qualify under the substantial equivalency standard on an individual basis.

In the interest of obtaining maximum uniformity and interstate mobility, and assuring that CPAs are subject to only one type of regulatory scheme, the Uniform Act should be the standard of regulation for certificate holders in the U.S. and its jurisdictions. All states and jurisdictions should seek to adopt the Uniform Act to provide uniformity in accountancy regulation. Uniformity will become even more essential in the future as international trade agreements ~~such as the U.S.-Canada Free Trade Agreement~~ continue to be adopted causing the accounting profession to adopt a global focus.

Implementation of the Governing Principles in the Uniform Accountancy Act

Reflecting the fundamental principles just discussed, following are the key features of the Uniform Act.

1. The only kinds of professional services for which licensing is required are attest services defined as (a) the audit function--the expression of opinions on financial statements; (b) the issuance of reports in standard form upon reviews of financial statements; and (c) the issuance of reports in standard form upon compilations of financial statements and (d) the examination of prospective financial information. (See section 3(k), defining the term "report"; and sections 14(a), ~~(b), and (c)~~, respectively prohibiting unlicensed persons from issuing reports on audits, reviews, and compilations of financial statements.) For purposes of defining attest in this Act, it is limited to the expression of opinions on financial statements and financial information. These services are restricted to licensees and firms under the Act. Other attestation services are not restricted to licensees or firms, however, when licensees perform those services they are regulated by the state board of accountancy. Anyone, whether licensed or not, may offer and perform any other kind of accounting service, including tax services, management advisory services, and the preparation of financial statements without such reports. (See section 14(a).)

2. In order to perform the ~~audit function~~ attest services, ~~one~~ a CPA firm or sole practitioner must meet certification requirements (under section 6) for individuals and permit requirements (under section 7) for firms. The Uniform Accountancy Act involves a ~~"one-tier"~~ regulatory system in which applicants obtain and renew a ~~certificate~~ license. All ~~applicants~~ licensees who are responsible for supervising attest services and sign reports on financial statements on behalf of their firm must meet the experience requirements ~~set out in the Act~~ required by professional standards before they may ~~receive a certificate~~ perform attest services. All licensees, whether in private industry, education, government, or public practice, must meet the same continuing education requirement.

3. In order to facilitate interstate practice and free movement of practitioners between states, a provision is made for reciprocal recognition of licenses issued by other states. ~~This is done by providing for the issuance of a certificate to a holder of a certificate of another state~~ Those individual licensees who meet the substantial equivalency standard may freely practice across state lines without the need for additional licensure. They need only provide notice to the state board of the state in which they want to practice. In cases in which the requirements of the other state are not in compliance with the Uniform Accountancy Act and the individual does not personally meet its standard for education, the Act allows the individual to demonstrate experience in the practice of public accountancy as a substitute for the education qualifications (See section 6(c)). Reciprocity for those CPAs who establish their principal office in another state requires an application process, however, upon a demonstration that the qualifications for the other state's certificate were comparable in compliance with the standards set out in this Uniform Act, a reciprocal license will be issued (Section 23) to those of the state where the certificate is to be issued, or, if they are not closely comparable, allowing for a demonstration of experience in the practice of public accountancy as a substitute for the comparable qualifications (section 6(c)).

4. The Uniform Act includes provisions that would preserve a class of "grandfathered" practitioners licensed to use the title "public accountant" and to perform the audit function, where an existing accountancy law to be superseded by the Uniform Act has provided for such licensing (section 8), but would not provide for the creation of any new such class where it had not existed under prior law.

There are three states where the accountancy law currently in effect, though providing for the issuance of CPA certificates, does not restrict unlicensed persons from performing any sort of professional accounting service, including the audit function. If those states should decide to change to a form of accountancy law that restricts the audit function to licensees, like all other American jurisdictions, the recommendation implicit in this Uniform Act is that they not create any second class of licensees, "grandfathered" or other. There are some states where a provision is currently made for a second class of licensees, given exclusive right to use a particular title but not the right to perform the audit function. Because no public interest is served by such a second class of licensees, this Uniform Act contains no such provision.

5. Licensees are subject to regulation of their professional conduct in their performance of ~~the full array of any~~ professional services ~~constituting the practice of public accountancy, even with respect to including~~ those services for which a license is not required and regarding which, in consequence, other persons are entirely unregulated under the Act; ~~although in the interest of avoiding unduly broad application of such regulation, the definition of the practice of public accountancy requires a holding out to the public that one has a certificate, registration or permit. (See section 3(ik), defining the "practice of public accountancy"; section 4(h)(4), directing the State Board of Accountancy to promulgate rules of professional conduct governing the practice of public accountancy; section 10(a)(5), providing that dishonesty, gross negligence, or fraud in the practice of public accountancy is grounds for disciplinary action.)~~

6. In order to prevent misleading the public regarding the qualifications or licensure status of persons who are not licensed, the Uniform Act contains a series of prohibitions on the use by unlicensed persons or firms of titles restricted to licensees under the Act, or titles misleadingly similar to such titles (see sections 14~~(d)-(i))~~ (b)-(g)).

7. The Uniform Act contemplates that, as with most accountancy laws now in effect, responsibility for administration and implementation will be vested in a State Board of Accountancy (section 4). The Board administers examinations and issues certificates (sections 5 and 6); issues permits to firms (section 7); promulgates rules that govern the conduct of licensees and that otherwise implement the Act (section 4(h)); and has principal responsibility for disciplinary enforcement (sections 10-13, 15).

8. The desirability of uniformity among jurisdictions, mentioned above as one of the fundamental principles of both the AICPA's and NASBA's legislative policies, is recognized in the Uniform Act provisions dealing with such matters as education and experience requirements for the initial granting of a certificate (section 5), and the continuing professional education requirements for the renewal of certificates (section 6). As mentioned in the comments following several of these provisions, they are framed in a substantially more detailed fashion than might otherwise be expected (dealing with matters that might often be addressed by regulation rather than statute) in order to encourage uniformity among the various states.

9. The proposal for regulatory change which is included in this Act seeks to accomplish the broad objectives of mobility and uniformity within today's state-based regulatory model. It includes

implementation of a “substantial equivalency” standard to simplify reciprocity and to provide practice rights across state lines for CPAs from states meeting UAA standards as well as for CPAs who individually meet UAA standards.

A Note About Format

Beginning with the 1992 edition, the Uniform Accountancy Act has been designed as a living an “evergreen” document. ~~The 1992 revision addressed some of the most important issues facing the profession, such as the 150-hour education requirement, continuing professional education for all certificate holders, quality review and legal liability issues. The current edition does not make any revisions in the 1984 edition of the Model Bill or 1992 edition of the Uniform Act with regard to such issues as code of conduct, commissions and contingent fees, independence, non-CPA ownership and specialization. Future editions of the Uniform Accountancy Act may revise or add sections on those subjects. This edition does makes many significant changes to the prior edition in such areas as regarding form of practice and the examination and unlawful acts sections and adds Uniform Accountancy Rules. This printing of the Act changes the format. Pages have been dated and renumbered. State boards of accountancy and state societies will receive looseleaf versions. Others will receive photocopies. This will further simplify the revision process the new substantial equivalency standard, commissions and contingent fees, the regulation of firms, non-licensee ownership, inactive status, safe harbor language and experience to perform attest services. Pages are dated and page numbering corresponds to sections and rules in the document. To ensure that the Uniform Act will remain “Evergreen,” it will be published as often as changes in individual sections are approved by the AICPA and NASBA. A formal process is in place to address needed changes. A formal process remains in place to address needed changes.~~

The Uniform Act comprises the complete text of a statute (in boldface serif type) that could be adopted in place of any accountancy law now in effect, with explanatory comments (not intended to be enacted as part of the law) following some provisions printed in regular serif type. It may happen that a particular legislature will be interested in considering, not a complete new law but only certain provisions, to be substituted for or added to provisions of the law already in effect. An effort has been made to make the provisions of the Uniform Act readily adaptable for this purpose. However, in the event of piecemeal adoption, it is likely that changes in particular provisions will be required in order to tailor them to the terminology and structure of the existing legislation. The comments attempt to identify important matters that might need to be considered in such circumstances, but no effort has been made to identify every point regarding which adaptation might be required; that can better be done (and in any event would have to be done) when particular legislation is actually under consideration.

Whether the Uniform Act is considered for adoption wholly or only in part, adjustments may also be appropriate in light of other laws in effect in the particular state in question. Some provisions included in the Uniform Act may be unnecessary, for example, because they are covered by other laws of general applicability, such as a state administrative procedure act. Other provisions may be at odds with the way a particular matter is generally dealt with in the state--for example, the authority of

licensing Boards, or their procedures, or their composition. Again, the comments attempt to identify the principal points requiring consideration in this regard. Provisions, such as the one related to the size of the Board (section 4(a)) on which this Uniform Act presents specific choices, are flagged by brackets.

Uniform Accountancy Act

An Act to provide for the issuance of certificates as certified public accountants to regulate the practice of accountancy CPAs in the public interest; and to establish a Board of Accountancy and prescribe its powers and duties.

SECTION 1

TITLE

This Act may be cited as the "Accountancy Act of 19__."

SECTION 2

PURPOSE

It is the policy of this State, and the purpose of this Act, to promote the reliability of information that is used for guidance in financial transactions or for accounting for or assessing the financial status or performance of commercial, noncommercial, and governmental enterprises. The public interest requires that persons professing special competence in accountancy or offering assurance as to the reliability or fairness of presentation of such information shall have demonstrated their qualifications to do so, and that ~~no~~ persons who have not demonstrated and maintained such qualifications, ~~including certificate holders not in public practice~~, not be permitted to ~~hold~~ represent themselves ~~out~~ as having such special competence or to offer such assurance; that the professional conduct of persons licensed as having special competence in accountancy be regulated in all aspects of ~~their practice of public accountancy professional work~~; that a public authority competent to prescribe and assess the qualifications and to regulate the professional conduct of ~~practitioners of public accountancy licensees~~ be established; and that the use of titles ~~relating to the practice of public accountancy~~ that are likely to mislead the public as to the status or competence of the persons using such titles be prohibited.

COMMENT. This statement of legislative purposes reflects the fundamental principles governing the regulation of ~~public accountancy and holders of certificates as certified public accountants, who are not in public practice~~ discussed in the introductory comments.

SECTION 3 DEFINITIONS

When used in this Act, the following terms have the meanings indicated:

(a) **Attest means providing:**

(1) any audit or other engagement performed in accordance with the Statements on Auditing Standards (SAS);

(2) any review of a financial statement or compilation of a financial statement performed in accordance with the Statement on Standards for Accounting and Review Services (SSARS), and;

(3) any examination of prospective financial information performed in accordance with the Statements on Standards for Attestation Engagements (SSAE).

COMMENT. Note, for purposes of defining attest in this Act, it is limited to the expression of opinions on financial statements and financial information. These services are restricted to licensees and firms under the Act. Other attestation services are not restricted to licensees or firms, however, when licensees perform those services they are regulated by the state board of accountancy. See also the definition of Report.

(a)(b) "Board" means the _____ Board of Accountancy established under Section 4 of this Act or its predecessor under prior law.

COMMENT. The general purpose of references to prior law, in this provision and others below, is to assure maximum continuity in the regulatory system, except where particular changes are specifically intended to be brought about by amendment of the law.

(b)(c) "Certificate" means a certificate as "certified public accountant" issued under Section 6 of this Act or corresponding provisions of prior law, or a corresponding certificate as certified public accountant issued after examination under the law of any other state.

COMMENT. The term here defined is used in section 3(ji), defining the term "~~peer~~ quality review"; section 4(a), regarding the composition of the Board of Accountancy; section 4(h)(6), regarding Board rules governing use of the titles "certified public accountant" and "CPA"; section 10(a), regarding enforcement proceedings; and section 14(~~db~~), prohibiting use of the titles "certified public accountant" and "CPA" by persons not holding certificates.

In a few states the law allows for the issuance of "certificates" to certain practitioners who have not passed the examination ordinarily required (and provided for by section 5 of this Uniform Act). The

definition of the term "certificate," insofar as it has reference to those issued by other states, excludes any certificate for which an examination was not required.

(ed) "CPA Firm" means a sole proprietorship, a corporation, a partnership or any other form of organization.

COMMENT. This defined term is used in section 7, on permits to practice for firms, in such a way as to allow the Uniform Act, unlike some accountancy laws now in effect, to treat both partnerships and corporations in a single provision rather than in two separate but parallel provisions for the two different forms of organization. It is also used in section 12(j), on rights of appeal from an adverse Board decision in an enforcement proceeding; sections 14(a)-(e), prohibiting issuance of reports on financial statements or attest services by unlicensed persons and firms; 14(ee), (ge), (hf) and (ig), regarding use of certain titles by unlicensed persons and firms; section 14(jh), regarding misleading firm names; and section 14(ki), defining certain rights of foreign licensees to serve foreign clients. The definition of "firm" is designed to be broad enough to include any type of business entity or combination of business entities, recognized by the state.

Inclusion of sole proprietorships in the definition of the term "firm" has the effect of requiring sole practitioners to secure both individual certificates under section 6 and firm permits to practice under section 7. This will assure that all practice units have firm permits. The Board would have the power to alleviate the burden of duplicate applications (where the same person must secure both an individual certificate and a firm permit) by providing for joint application forms.

(d)(e) "License" means a certificate issued under Section 6 of this Act, a permit issued under Section 7 or a registration under Section 8; or, in each case, a certificate or permit issued under corresponding provisions of prior law.

COMMENT. See commentary to section 3(e) below.

(e)(f) "Licensee" means the holder of a license as defined in Section 3(de).

COMMENT. This term is intended simply to allow for briefer references in provisions that apply to both holders of certificates and holders of permits: See ~~section 3(i), defining practice of public accountancy~~; section 4(h), regarding rules to be promulgated by the Board of Accountancy; section 5(b), regarding the meaning of "good character" in relation to the professional responsibility of a licensee; sections 11(c) and (d), regarding Board investigations; sections 12(a)-(c), (i), and (k), relating to hearings by the Board; section 18, relating to confidential communications; and sections 19(a) and (b), regarding licensees' working papers and clients' records.

One place where the term is not used even though it could be is the caption of section 10, Enforcement Against Holders of Certificates, Permits, and Registrations; there, it seems desirable to use the fuller, more informative phrase.

(f)(g) "Manager" means a manager of a limited liability company.

(g)(h) "Member" means a member of a limited liability company.

COMMENT. The two defined terms "manager" and "member" assume that the state has adopted a limited liability company law, and that these terms are used in that law. If this is not the case, then these terms should not be included in the Act, either here, or in the substantive provisions of the Act: sections 7(c), 7(f), 12(c), 14(a), 14(ec), 14(ig), 14(jh), 18, 19(a). The point is an important one, since the two terms are in general use in circumstances where their meaning is different from what is intended here.

(j)(i) "~~Peer Quality Review~~" means a study, appraisal, or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy that performs attest services, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed.

COMMENT. This defined term, which includes but is not limited to what is sometimes also referred to as a peer review, is employed in section 4(h)(7), which empowers the Board to issue rules prescribing how such reviews are to be performed; section 7(gh), contemplating such reviews in connection with renewals of firm permits; section 10(b)(1), specifying that such reviews are available as remedies in enforcement proceedings; section 13(c), providing that the Board may require such reviews as a condition of reinstatement after a suspension or revocation of a certificate or permit; and section 18, on confidential communications, which recognizes an exception for peer quality review. The rules issued by the Board under section 4(h)(7) would presumably prescribe, among other things, how the requirement of independence, or nonaffiliation, of the reviewer to the person or firm being reviewed is to be implemented.

(h)(j) "Permit" means a permit to practice ~~public accountancy as a CPA firm~~ issued under Section 7 of this Act or corresponding provisions of prior law or under corresponding provisions of the laws of other states.

(i) "~~Practice of (or practicing) public accountancy~~" means the performance or the offering to perform by a person ~~licensees or CPA firm holding itself out to the public as a licensee, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.~~

COMMENT. The principal purpose of this definition is to describe, inclusively, the range of services with respect to which licensees under the bill are subject to regulation. The term is used, and the definition has operative significance, for this purpose in section 4(h)(4), regarding rules of professional conduct to be promulgated by the Board; section 10(a)(5), specifying dishonesty, fraud, or gross negligence in the practice of public accountancy as grounds for sanctions against licensees; section 10(a)(10), regarding conduct reflecting adversely on a licensee's fitness to practice; section

~~14(j), prohibiting use of misleading professional or firm names by holders of permits; and section 14(k), making clear the entitlements of holders of foreign licenses whose activities are limited to serving foreign clients. The term is also used in a more general, shorthand descriptive fashion, in section 3(h), defining permit, and section 7(a) providing for issuance of permits; section 3(j), defining the term quality review; section 5(i), regarding the experience required for a certificate; section 6(e)(2)(C), regarding experience requirements for certain applicants for "reciprocal" certificates; section 7(f), requiring applicants for firm permits to list other states in which they are practicing public accountancy; section 10(a)(2), which makes reference, in an enforcement context, to licenses to practice in another state; and section 14(k), dealing with the permissible scope of activities by holders of foreign licenses.~~

~~It bears emphasis that, by reason of the broad definition of practice of public accountancy, and the manner in which the defined term is used in operative provisions of the bill, licensees are subject to regulation in a wide range of activities as to which nonlicensees are subject to no regulation at all. The certificate requirement applies to any aspect of the practice of public accountancy as broadly defined; even though it may be other than audit practice and even though it may be ancillary to some other principal occupation. However, the definition of practice of public accountancy is not so broad as to extend to otherwise unrestricted services when they are performed or offered by a person who, although holding a certificate, is not encouraging clients or customers to rely on that fact, by holding out to the public as a certificate holder. This requirement of "holding out" is intended to prevent application of the law to regulate persons who, though they have a certificate, are not making use of it in connection with their business activities. Section 4(h)(5) gives the Board authority to issue rules specifying actions and circumstances constituting such a "holding out."~~

(k) "Report," when used with reference to financial statements, means an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that the person or it firm is an accountant or auditor, or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to and/or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

COMMENT. As has been explained in the introductory comments, the audit function, which this term is intended to define, is the principal kind of professional accounting service for which a license would be required under the Uniform Act. The term has its most important operative use in section 14(a) of the Act, which prohibits persons not licensed from performing that function as well as any attest services as defined above. See also sections 14(b) and (c).

It is a point of fundamental significance that the audit function is defined, not in terms of the work actually done, but rather in terms of the issuance of an opinion or a report--that is, the making of assertions, explicit or implied--about work that has been done. It is such reports, or assertions, upon which persons using financial statements (whether clients or third parties) rely, reliance being invited by the assertion, whether explicit or by implication, of expertise on the part of the person or firm issuing the opinion or report. Thus, this definition is sought to be drawn broadly enough to encompass all those cases where either the language of the report itself, or other language accompanying the report, carries both a positive assurance regarding the reliability of the financial information in question, and an implication (which may be drawn from the language of the report itself) that the person or firm issuing the report has special competence which gives substance to the assurance.

The definition includes disclaimers of opinion when they are phrased in a fashion which is conventionally understood as implying some positive assurance, because authoritative accounting literature contemplates several circumstances in which a disclaimer of opinion in standard form implies just such assurances. The same reasoning that makes it appropriate to include disclaimers of opinion in conventional form within the definition of this term makes it appropriate to apply the prohibition on the issuance by unlicensed persons of reports, as so defined, on "reviews" and "compilations" within the meaning of the AICPA's Statement on Standards for Accounting and Review Services No. 1 (SSARS 1), when the language in which the report is phrased is that prescribed by SSARS 1. This is done in sections 14(b) and (c)(a). These prohibitions, again, do not apply to the services actually performed--which is to say that there is no prohibition on the performance by unlicensed persons of either reviews or compilations, in the sense contemplated by SSARS 1, but only on the issuance of reports asserting or implying that their author has complied with the SSARS 1 standards for such reviews and compilations and has the demonstrated capabilities so to comply.

(l) "Rule" means any rule, regulation, or other written directive of general application duly adopted by the Board.

(m) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam; except that "this State" means the State of _____.

(on) "Substantial equivalency" is a determination by the board of accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act or that an individual CPA's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the Uniform Accountancy Act.

COMMENT: For purposes of practice rights and reciprocity, an applicant that has an active certificate as a certified public accountant from any jurisdiction or an individual CPA that has obtained from the Board of Accountancy or NASBA a determination of substantial equivalency with the Uniform Accountancy Act's CPA licensure requirements shall be presumed to have qualifications substantially equivalent to this jurisdiction's.

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SECTION 4
STATE BOARD OF ACCOUNTANCY

- (a) There is hereby created the _____ Board of Accountancy, which shall have responsibility for the administration and enforcement of this Act. The Board shall consist of ____ members, appointed by the Governor, all of whom shall be residents of this State. At least [a majority plus one] of such members shall be holders of currently valid certificates issued under Section 6 of this Act or corresponding provisions of prior law; and any members of the Board not having such qualifications shall have had professional or practical experience in the use of accounting services and financial statements, so as to be qualified to make judgments about the qualifications and conduct of persons and firms subject to regulation under this Act. The term of each member of the Board shall be four ____ years; ~~except that, of the members first to be appointed, _____ shall hold office for one year, _____ for two years, and _____ for three years from the effective date of this Act,~~ the term of each to be designated by the Governor. [Alternatively: except that members of the _____ Board of Accountancy appointed and serving as such under prior law at the effective date of this Act shall serve out the terms for which they were appointed, as members of the Board created by this Section.] Vacancies occurring during a term shall be filled by appointment by the Governor for the unexpired term. Upon the expiration of the member's term of office, a member shall continue to serve until a successor shall have been appointed and taken office. Any member of the Board whose certificate under Section 6 of this Act is revoked or suspended shall automatically cease to be a member of the Board, and the Governor may, after a hearing, remove any member of the Board for neglect of duty or other just cause. No person who has served two successive complete terms shall be eligible for reappointment, but appointment to fill an unexpired term shall not be considered a complete term for this purpose.

COMMENT. A number of decisions have to be made with regard to the structure and composition of licensing bodies such as state boards of accountancy, and these decisions will vary from state to state according to the patterns prevailing in the different states with respect to other licensing Boards. This provision of the Uniform Act is intended to identify the principal decision points and to suggest, on the basis of general experience, what seem to be the preferable solutions.

As respects the number of Board members, it is suggested that the appropriate range is from five to nine, and that the number should be an odd one, so as to minimize the likelihood of tie votes.

This provision assumes that, as is ever more widely the case, one or more members of the Board will be other than licensees (sometimes called "public" members). It also reflects the view that, in light of the technical nature of much of the Board's responsibilities, it is desirable that an effective majority of the Board be certificate holders: This would be achieved by the requirement that one more than a majority of the Board be certificate holders. As respects the terms of Board members, it is desirable that the terms be staggered; that they be long enough to allow effective service, though not so long

1 that a Board member who proves ineffective remains in office any longer than necessary; and that
2 they be renewable but that there be a limit on the number of times they may be renewed. This
3 provision reflects the view that the length of the term should be four years rather than three years,
4 as is now more commonly the case. Although there seems to be an increasing trend toward not
5 reappointing Board members for a second term, it takes any new Board member some time in office
6 before he is fully effective. A somewhat longer term seems an appropriate way of balancing these two
7 considerations.
8

9 **(b) The Board shall elect annually from among its members a chairman and such other**
10 **officers as the Board may determine to be appropriate. The Board shall meet at such**
11 **times and places as may be fixed by the Board. Meetings of the Board shall be open to**
12 **the public except insofar as they are concerned with investigations under Section 11 of**
13 **this Act and except as may be necessary to protect information that is required to be**
14 **kept confidential by Board rules or by the laws of this State. A majority of the Board**
15 **members then in office shall constitute a quorum at any meeting duly called. The Board**
16 **shall have a seal which shall be judicially noticed. The Board shall retain or arrange for**
17 **the retention of all applications and all documents under oath that are filed with the**
18 **Board and also records of its proceedings, and it shall maintain a registry of the names**
19 **and addresses of all licensees under this Act. In any proceeding in court, civil or**
20 **criminal, arising out of or founded upon any provision of this Act, copies of any of said**
21 **records certified as true copies under the seal of the Board shall be admissible in evidence**
22 **as tending to prove the contents of said records.**
23

24 *COMMENT.* This subsection, like the preceding one, presents a number of decision points that may
25 vary according to state practice, and it includes some provisions (notably the ones regarding open
26 meetings and confidential information) that may be unnecessary in the accountancy law because they
27 are covered by state laws of general application. Subject to such variances, the provisions
28 recommended appear to be desirable ones in the light of general experience.
29

30 **(c) Each member of the Board shall be paid an amount established by law for each day or**
31 **portion thereof spent in the discharge of the member's official duties and shall be**
32 **reimbursed for the member's actual and necessary expenses incurred in the discharge**
33 **of the member's official duties.**
34

35 **(d) All moneys collected by the Board from fees authorized to be charged by this Act shall**
36 **be received and accounted for by the Board and shall be deposited in the State Treasury**
37 **to the credit of the Board. Appropriation shall be made for the expenses of administering**
38 **the provisions of this Act, which may include, but shall not be limited to, the costs of**
39 **conducting investigations and of taking testimony and procuring the attendance of**
40 **witnesses before the Board or its committees; all legal proceedings taken under this Act**
41 **for the enforcement thereof; and educational programs for the benefit of the public and**
42 **licensees and their employees.**

COMMENT. A provision of this kind, effectively providing that at least a substantial portion of the revenues raised from fees required to be paid by applicants and licensees will be applied to defraying the expenses of administering the law, has proved a desirable one in those jurisdictions where the statute contains such a provision. The typical pattern is that the regulation of public accountancy is, from the state's point of view, self-supporting. The extent to which the Board has adequate staff to assist it (as provided in subsection (f) below) and other resources necessary to do its job effectively may well depend on the extent to which such revenues are available for use in the administration of the Act.

(e) **The Board shall file an annual report of its activities with the Governor and the legislature, which report shall include a statement of all receipts and disbursements and a listing of all current licensees under this Act. The Board shall mail a copy of the annual report to any person requesting it and paying a reasonable charge therefor.**

(f) **The Board may employ an executive director and such other personnel as it deems necessary in its administration and enforcement of this Act. It may appoint such committees or persons, to advise or assist it in such administration and enforcement, as it may see fit. It may retain its own counsel to advise and assist it in addition to such advice and assistance as is provided by the Attorney General of this State.**

COMMENT. Adequate staffing can be an important determinant of how effective a Board of Accountancy is in discharging its statutory obligations. The same is true of the ability of a Board to employ independent counsel from time to time for special purposes, in addition to the counsel normally provided to it by the state attorney general's office. With regard to the financing necessary to implement such provisions, see the comment following subsection (d).

An additional way for a Board to increase its effectiveness, which does not involve significant expense, is the appointment of committees or individuals not on the Board or its staff, to advise and assist it in various ways, including disciplinary investigations (see section 11(b)).

(g) **The Board shall have the power to take all action that is necessary and proper to effectuate the purposes of this Act, including the power to sue and be sued in its official name as an agency of this State; to issue subpoenas to compel the attendance of witnesses and the production of documents; to administer oaths; to take testimony and to receive evidence concerning all matters within its jurisdiction. In case of disobedience of a subpoena, the Board may invoke the aid of any court of this State in requiring the attendance and testimony of witnesses and the production of documentary evidence. The Board, its members, and its agents shall be immune from personal liability for actions taken in good faith in the discharge of the Board's responsibilities, and the State shall hold the Board, its members, and its agents harmless from all costs, damages, and attorneys' fees arising from claims and suits against them with respect to matters to which such immunity applies.**

1 *COMMENT.* In many accountancy laws now in effect, the provisions regarding subpoenas and
2 testimony that are included in this paragraph dealing with Board powers generally are found instead
3 in the section dealing with hearings, which is section 12 in this Uniform Act.
4

5 **(h) The Board may adopt rules governing its administration and enforcement of this Act**
6 **and the conduct of licensees, including but not limited to--**
7

8 **(1) Rules governing the Board's meetings and the conduct of its business;**
9

10 **(2) Rules of procedure governing the conduct of investigations and hearings by the**
11 **Board;**
12

13 **(3) Rules specifying the educational and experience qualifications required for the**
14 **issuance of certificates under Section 6 of this Act and the continuing professional**
15 **education required for renewal of certificates under Section 6;**
16

17 **(4) Rules of professional conduct directed to controlling the quality and probity of the**
18 **practice of public accountancy services by licensees, and dealing among other**
19 **things with independence, integrity, and objectivity; competence and technical**
20 **standards; responsibilities to the public; and responsibilities to clients;**
21

22 ~~**(5) Rules specifying actions and circumstances that shall be deemed to constitute**~~
23 ~~**holding oneself out as a licensee in connection with the practice of public**~~
24 ~~**accountancy within the meaning of Section 3(i);**~~
25

26 ~~**(6)**~~ **Rules governing the manner and circumstances of use of the titles "certified public**
27 **accountant" and "CPA";**
28

29 ~~**(7)**~~ **Rules regarding peer quality review that may be required to be performed under**
30 **provisions of this Act; and**
31

32 ~~**(8)**~~ **Rules on substantial equivalence to implement Section 23.**
33

34 **(8) Such other rules as the Board may deem necessary or appropriate for**
35 **implementing the provisions and the purposes of this Act.**
36

37 *COMMENT.* See the comment following section 3(~~ik~~) regarding paragraph (5); see the comment
38 following section 3(~~ji~~) regarding paragraph (7).
39

40 **(i) At least 60 days prior to the proposed effective date of any rule or amendment thereto**
41 **under subsection (h) of this Section or any other provision of this Act, the Board shall**
42 **publish notice of such proposed action and of a public hearing to be held no more than**
43 **30 days prior to such effective date, in [the State Register or equivalent official**
44 **publication].**

1 *COMMENT.* The provision for publication of proposed rules and amendments thereto in an official
2 state register, and for public hearings thereon, may be covered in some states by a state statute of
3 general application, such as an Administrative Procedure Act; but where this is not the case, it
4 appears a desirable provision for a state accountancy law. Some existing laws also have a provision
5 requiring separate notice by mail to all licensees of any proposed rule or amendment; but, no such
6 provision is included here because the expense of notice by mail seems unjustified when adequate
7 notice by publication is available.

SECTION 5

QUALIFICATIONS FOR A CERTIFICATE AS A CERTIFIED PUBLIC ACCOUNTANT

- (a) The certificate of "certified public accountant" shall be granted to persons of good character who meet the education, experience and examination requirements of the following subsections of this Section and who make application therefor pursuant to Section 6 of this Act.

COMMENT. As mentioned in the introductory comments, this Uniform Act, like many accountancy laws now in effect, involves a "one-tier" licensure system. ~~A one-tier system that eliminates questions as to who may use the CPA title. Under a two-tier system, confusion may arise because some individuals may hold a CPA certificate without also holding a permit to practice.~~ All individuals that wish to use the CPA title must obtain a certificate.

It may be noted that this provision contemplates that there will be no certificate requirements with respect to citizenship, age, or residency. A citizenship requirement would not be constitutional; in view of the education requirement, a separate age requirement seems without utility; and in light of the desirability, explained in the introductory comments, of achieving maximum uniformity and reciprocity among the various states, a residency requirement seems not merely useless but counterproductive.

- (b) Good character for purposes of this Section means lack of a history of dishonest or felonious acts. The Board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a licensee and if the finding by the Board of lack of good character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the Board shall furnish the applicant a statement containing the findings of the Board, a complete record of the evidence upon which the determination was based, and a notice of the applicant's right of appeal.

COMMENT. This provision is intended both to assure that the requirement of good character will be narrowly and precisely construed, avoiding problems of both vagueness and overbreadth and to assure procedural fairness in any instance where a certificate is denied on the basis of lack of good character. The right of appeal referred to would presumably be prescribed by a statute of general application, such as an Administrative Procedure Act.

- (c) The education requirement for a certificate, which must be met before an applicant is eligible to apply for the examination prescribed in subsection (d), shall be as follows:

- (1) During the ~~_____~~ five -year period immediately following the effective date of this Act, a baccalaureate degree or its equivalent conferred by a college or university

acceptable to the Board, with an accounting concentration or equivalent as determined by Board rule to be appropriate;

- (2) After the expiration of the five -year period immediately following the effective date of this Act, at least 150 semester hours of college education including a baccalaureate or higher degree conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent as determined by Board rule to be appropriate.

COMMENT. Paragraph (2) of this provision would, after the lapse of the specified number of years, put into effect a 150-hour education requirement. The report of the Commission on Professional Accounting Education (issued in August 1983) sets out the considerations that underlie the policies of both the AICPA and NASBA favoring establishment of such a requirement.

- (d) The examination required to be passed as a condition for the granting of a certificate ~~shall be in writing~~, shall be held at least twice a year, and shall test the applicant's knowledge of the subjects of accounting and auditing, and such other related subjects as the Board may specify by rule. The time for holding such examination shall be ~~fixed~~ determined by the Board and may be changed from time to time. The Board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate provided, however, that the Board shall to the extent possible see to it that the grading of the examination, and the passing grades, are uniform with those applicable in all other states. The Board may make such use of all or any part of the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants and may contract with third parties to perform such administrative services with respect to the examination as it deems appropriate to assist it in performing its duties hereunder.

COMMENT. The Uniform Certified Public Accountant Examination and Advisory Grading Service, referred to in this provision, has for some years been consistently used by the Board of Accountancy (or its equivalent) of every American jurisdiction. Although the grading provided by that service is, as the name implies, only advisory, with each state Board retaining ultimate authority to determine grades and passing requirements, it is obvious that uniformity among jurisdictions in these matters is a matter of considerable importance.

Uniformity respecting the examination is essential to ensuring interstate mobility for the certificate holders of this state.

- (e) An applicant shall be required to pass all sections of the examination provided for in subsection (d) in order to qualify for a certificate. A passing grade for each section shall be 75. If at a given sitting of the examination an applicant passes two or more but not

all sections, then the applicant shall be given credit for those sections that the applicant has passed and need not sit for reexamination in those sections, provided that--

- (1) at that sitting the applicant wrote all sections of the examination for which the applicant does not have credit;
- (2) the applicant attained a minimum grade of 50 on each section taken at that sitting;
- (3) the applicant passes the remaining sections of the examination within six consecutive examinations given after the one at which the first sections were passed;
- (4) at each subsequent sitting at which the applicant seeks to pass any additional sections, the applicant writes all sections for which the applicant does not have credit; and
- (5) in order to receive credit for passing additional sections in any such subsequent sitting, the applicant attains a minimum grade of 50 on sections taken at that sitting.

COMMENT. This provision goes into unusual detail in prescribing the requirements applicable to the granting of partial credits where an applicant passes part but not all of the CPA examination at a given sitting (these requirements are commonly referred to as "conditioning" requirements). The reason for such detail is, as explained in the introductory comments, the desirability of uniform requirements among all jurisdictions so as to provide maximum latitude for transferability of credits and consequent mobility of applicants.

- (f) An applicant shall be given credit for any and all sections of an examination passed in another state if such credit would have been given, under then applicable requirements, if the applicant had taken the examination in this State.
- (g) The Board may in particular cases waive or defer any of the requirements of subsections (e) and (f) regarding the circumstances in which the various sections of the examination must be passed, upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet such requirement.
- (h) The Board may charge, or provide for a third party administering the examination to charge, each applicant a fee, in an amount prescribed by the Board by rule, for each section of the examination or reexamination taken by the applicant.
- (i) An applicant for initial issuance of a certificate under this Section shall show that the applicant has had one year of experience, ~~providing one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on~~

~~financial statements, or one or more kinds of management advisory, financial advisory, or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters, or the equivalent, all of which was under the direction of a licensee, meeting requirements prescribed by the Board by rule. This experience shall include providing any type of service or advice involving the use of accounting, attest, management advisory, financial advisory, tax or consulting skills all of which was under the direction of a licensee or appropriately qualified professional acceptable to the Board, meeting requirements prescribed by the Board by rule. This experience would be acceptable if it was gained through employment in government, industry, academia or public practice.~~

COMMENT. Before an applicant may obtain a certificate, the applicant must obtain actual experience in the practice of public accountancy or experience that the Board deems equivalent to such experience. It is contemplated that the Board will issue rules under section 4(h)(3) specifying the kinds of experience necessary to meet the requirement applicable to initial issuance of a certificate. The Board may think it advisable to require that some specified portion of the experience be current-- that is, during a period immediately preceding the application. however, that experience can be obtained in any area of employment involving the use of accounting or business skills. In addition, experience should be acceptable whether it is gained through employment in government, industry, academia or public practice.

SECTION 6

**ISSUANCE AND RENEWAL OF CERTIFICATES, MAINTENANCE OF COMPETENCY,
AND INACTIVE STATUS**

- (a) The Board shall grant or renew certificates to persons who make application and demonstrate (1) that their qualifications, including where applicable the qualifications prescribed by Section 5, are in accordance with the following subsections of this Section or (2) that they are eligible under the substantial equivalency standard set out in Section 23 of the Act which requires licensure for those CPAs that establish their principal office in another state. The holder of a certificate issued under this Section may only practice public accountancy provide attest services, as defined, in a CPA firm that holds a permit issued under Section 7 of this Act.

COMMENT. The comment under section 5(a), above, explains the role of the certificate in a "one-tier" system. Section 5 sets out the requirements for initial issuance of a certificate; this section provides for the process of application for the initial certificate, as well as for renewal of certificates, and It also outlines the process for the issuance of reciprocal certificates for applicants that do not meet the substantial equivalency standard. Applicants that meet the substantial equivalency standard set out in Section 23 receive reciprocity upon complying with notification requirements. This section also makes it clear that certificate holders may only practice public accountancy provide attest services in licensed firms.

- (b) Certificates shall be initially issued, and renewed, for periods of not more than three years but in any event shall expire on the [specified date] following issuance or renewal. Applications for such certificates shall be made in such form, and in the case of applications for renewal, between such dates, as the Board shall by rule specify, and the Board shall grant or deny any such application no later than _____ days after the application is filed in proper form. In any case where the applicant seeks the opportunity to show that issuance or renewal of a certificate was mistakenly denied, or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional certificate, which shall expire ninety days after its issuance or when the Board determines whether or not to issue or renew the certificate for which application was made, whichever shall first occur.

COMMENT. This provision reflects the pattern of some laws now in effect in contemplating a biennial or triennial rather than an annual renewal. The purpose of this is to make it possible to tie the renewal period to the period for completion of continuing professional education (CPE) requirements, as provided by subsection (d) below.

- (c) ~~The~~ With regard to applicants that are not eligible for reciprocity under the substantial equivalency standard set out in Section 23 of this Act, the Board shall issue a certificate to a holder of a certificate, license, or permit issued by another state upon a showing that--

- (1) The applicant passed the examination required for issuance of the applicant's certificate with grades that would have been passing grades at the time in this State;
- (2) The applicant--
 - (A) ~~meets all current requirements in this State for issuance of a certificate at the time application is made; or~~
 - (B) ~~(A) at the time of the issuance of the applicant's certificate in the other state, met all such requirements then applicable in this State; or~~
 - (C) ~~(B)~~ had ~~five~~ four years of experience outside of this State ~~in the practice of public accountancy of the type described in Section 5(i)~~ or meets equivalent requirements prescribed by the Board by rule, after passing the examination upon which the applicant's certificate was based and within the ten years immediately preceding the application;
- ~~(3) The applicant has had experience in the practice of public accountancy meeting the requirements of Section 5(i); and~~
- ~~(4) (3)~~ If the applicant's certificate, license, or permit was issued more than four years prior to the application for issuance of an initial certificate under this Section, that the applicant has fulfilled the requirements of continuing professional education that would have been applicable under subsection (d) of this Section.
- (4) An application under this Section may be made through the NASBA Qualification Appraisal Service.

COMMENT. This provision offers a means of providing for reciprocal recognition of licensees of other states who are not eligible under the substantial equivalency standard set out in Section 23 of this Act. Paragraph (2) requires a determination that the certificate of the other state has been issued on the basis of education and examination "conditioning" requirements comparable to those of this state, but makes allowance for an experience requirement as a substitute for these. The reciprocity so offered would be limited to CPAs--that is, it would exclude "grandfathered" PAs of other jurisdictions--since it rests upon the applicant having a certificate in the other jurisdiction, and, although there are a few jurisdictions where certificates have been issued to "grandfathered" public accountants, the term certificate is defined in section 3(~~bc~~) to refer only to certificates issued after successful completion of the examination prescribed in section 5 of this Act.

Subsection 6(c)~~(4)~~(3) is intended to assure that, where an extended period has passed between issuance of a certificate, license, or permit and the certificate holder's first application for a certificate

in this state, the applicant has fulfilled at least a substantial portion of the CPE requirements that were applicable to licensees practicing in this state during the same period.

Subsection 6(c)(4) makes the NASBA Qualifications Appraisal Service available to individuals who do not meet the substantial equivalency standard.

- (d) ~~For renewal of a certificate under this Section an applicant shall show that the applicant has completed 120 hours of continuing professional education which contribute to the general professional competence of the applicant during a three-year period with a minimum of twenty hours each year. The Board may prescribe by rule the content, duration and organization of continuing professional education courses that qualify for this requirement. each licensee shall participate in a program of learning designed to insure continuing professional competence. The Board may also provide by rule for prorated continuing professional education requirements to be met by applicants whose initial certificates were issued substantially less than three years prior to the renewal date, and it may prescribe by rule special lesser requirements to be met by applicants for certificates renewal whose prior certificates lapsed substantially prior to their applications for renewal, and regarding whom it would in consequence be inequitable to require a full compliance with all requirements of continuing professional education that would otherwise have been applicable to the period of lapse. The requirements established by the board of accountancy may specify any reasonable approach to meeting this requirement. The board of accountancy may specify any reasonable approach to meeting this requirement using as a guideline the Statement on Standards for Continuing Professional Education (CPE) Programs jointly approved by the National Association of State Boards of Accountancy (NASBA) and the American Institute of Certified Public Accountants (AICPA).~~

COMMENT. ~~This provision for mandatory CPE as a condition for renewal of certificates is an important provision of this Uniform Act aimed at assuring that persons licensed under the Act maintain an acceptable level of current knowledge in their field. When establishing credit for all courses, state Boards should acknowledge the equal importance of courses to CPAs who offer specialized services other than traditional public accounting to their clients or employers, and maintain the professional expertise of CPAs who offer such specialized services, including CPAs in industry. A licensee is deemed competent to serve the public when he or she initially meets the requirements for licensure. However, a dynamic professional environment requires a licensee to continuously maintain and enhance his or her knowledge, skills and abilities.~~

- (e) **The Board shall charge a fee for each application for initial issuance or renewal of a certificate under this Section in an amount prescribed by the Board by rule.**
- (f) **Applicants for initial issuance or renewal of certificates under this Section shall in their applications list all states in which they have applied for or hold certificates, licenses, or**

- permits and list any past denial, revocation or suspension of a certificate, license or permit, and each holder of or applicant for a certificate under this Section shall notify the Board in writing, within 30 days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate, license or permit by another state.
- (g) The Board shall issue a certificate to a holder of a foreign designation, granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy, provided that:
- (1) The foreign authority which granted the designation makes similar provision to allow a person who holds a valid certificate issued by this State to obtain such foreign authority's comparable designation; and
 - (2) The foreign designation:
 - (A) was duly issued by a foreign authority that regulates the practice of public accountancy and the foreign designation has not expired or been revoked or suspended;
 - (B) entitles the holder to issue reports upon financial statements; and
 - (C) was issued upon the basis of educational, ~~and~~ examination, and experience requirements established by the foreign authority or by law; and
 - (3) The applicant:
 - (A) received the designation, based on educational and examination standards substantially equivalent to those in effect in this State, at the time the foreign designation was granted;
 - (B) completed an experience requirement, substantially equivalent to the requirement set out in Section 5(i), in the jurisdiction which granted the foreign designation or has completed ~~five~~ four years of experience in the practice of public accountancy in this State; or meets equivalent requirements prescribed by the Board by rule, within the ten years immediately preceding the application; and
 - (C) passed a uniform qualifying examination in national standards [and an examination on the laws, regulations and code of ethical conduct in effect in this State] acceptable to the Board.
- (h) An applicant under subsection (g) shall in the application list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public accountancy, and each holder of a certificate issued under this subsection shall

notify the Board in writing, within thirty days after its occurrence, of any issuance, denial, revocation or suspension of a designation or commencement of a disciplinary or enforcement action by any jurisdiction.

- (i) The Board has the sole authority to interpret the application of the provisions of subsections (g) and (h).

COMMENT. Sections 6(g), 6(h) and 6(i) are designed to allow granting of reciprocal certificates as certified public accountants to foreign accountants who meet standards equivalent to those in this state. They are based on professional competence and its objective is to provide international reciprocity to qualified individuals without imposing arbitrary or unnecessary restrictions. The requirement set out in subsection 6(h) parallels the requirement set out in section 6(f) for applicants from other states.

- (j) (1) A certificate holder who is retired from the practice of public accountancy or who does not practice public accountancy and does not wish to meet the requirements for competency maintenance may assume inactive status by providing notice to the Board of the certificate holder's intent to assume inactive status.

For purposes of this inactive status, "practice of (or practicing) public accountancy" means the performance or the offering to perform by a licensee or a CPA firm, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or more kinds of management advisory, financial advisory or consulting services, or the preparation of tax returns or the furnishing of advice on tax matters.

(2) Certificate holders in inactive status must place the word "inactive" adjacent to their CPA designation on any business card, letterhead or any other document or device, with the exception of their CPA certificate, on which their CPA designation appears.

(3) Before returning to active status a certificate holder must comply with a re-entry competency requirement defined by the board as set out in Section 6(d).

COMMENT. This section provides a means for those individuals who are not using their CPA title to market services to the public to continue to use their professional designation. With the exception of Section 6(j), all references to "certificate holder" in this UAA refer to holders of an active certificate.

SECTION 7

FIRM PERMITS TO PRACTICE, ATTEST EXPERIENCE AND PEER REVIEW

- (a) The Board shall grant or renew permits to practice ~~public accountancy as a CPA firm~~ to firms entities that make application and demonstrate their qualifications therefor in accordance with the following subsections of this Section or to CPA firms originally licensed in another state that establish an office in this state. A firm must hold a permit issued under this Section in order to practice public accountancy provide attest services as defined or to use the designation “CPAs” or “CPA firm”.

COMMENT. This Uniform Act departs from the pattern of some accountancy laws now in effect in eliminating any separate requirement for the registration of firms and of offices. The information-gathering and other functions accomplished by such registration should be equally easily accomplished as part of the process of issuing firm permits under this section. The difference is, again, one of form more than of substance but one that should be kept in mind if consideration is given to fitting the permit provisions of this Uniform Act into an existing law.

As pointed out in the comment following section 3(ed), above, because a firm is defined to include a sole proprietorship, the permits contemplated by this section would be required of sole practitioners as well as larger practice entities. To avoid unnecessary duplication of paperwork, a Board could, if it deemed appropriate, offer a joint application form for certificates and sole practitioner firm permits.

This provision also makes it clear that unlicensed firms may not ~~practice public accounting provide attest services as defined, or call themselves CPA firms.~~ Certified Public Accountants are not required to offer services to the public, other than attest services, through a CPA firm. CPAs may offer non-attest services through any type of entity they choose and there are no requirements in terms of a certain percentage of CPA ownership for these types of entities as long as they do not call themselves a “CPA firm” or use the term “CPA” in association with the entity’s name. These non-CPA firms are not required to be licensed by the State Board.

- (b) Permits shall be initially issued and renewed for periods of not more than three years but in any event expiring on [specified date] following issuance or renewal. Applications for permits shall be made in such form, and in the case of applications for renewal, between such dates as the Board may by rule specify, and the Board shall grant or deny any such application no later than ____ days after the application is filed in proper form. In any case where the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied or where the Board is not able to determine whether it should be granted or denied, the Board may issue to the applicant a provisional permit, which shall expire ninety days after its issuance or when the Board determines whether or not to issue or renew the permit for which application was made, whichever shall first occur.

COMMENT. See the comment following section 6(b) regarding the renewal period.

(c) An applicant for initial issuance or renewal of a permit to practice under this Section shall be required to show that;

(1) A simple majority of all partners, officers, shareholders, members or managers hold a certificate and are licensed in some U.S. state each sole proprietor, and partners, officers, shareholders, members or managers who regularly works in this State, whose principal office is in this state, and who are eligible to have a certificate holds a valid certificate issued under Section 6 of this Act or the corresponding provision of prior law or is a are public accountants registered under Section 8 of this Act. and that each other partner, officer, shareholder, member, or manager holds a certificate is licensed to practice public accountancy in some other state. Firms may include non-licensee owners but the firm and its ownership must comply with rules promulgated by the Board. For firms of certified public accountants, at least a simple majority of the ownership of the firm, in terms of financial interests and voting rights, must belong to holders of certificates from some state. For firms of public accountants, at least a simple majority of the ownership of the firm, in terms of financial interests and voting rights, must belong to holders of registrations under Section 8 of this Act.

COMMENT. The limitation of the requirement of certificates to partners, officers, shareholders, members and managers who regularly work have their principal office in the state is intended to allow some latitude for occasional visits and limited assignments within the state of firm personnel who are based elsewhere. In addition, the requirement allows for non licensee ownership of licensed firms.

It should be pointed out that, since section 8 contemplates continuation of a "grandfathered" class of public accountants entitled to registration (and thereby entitled to perform the audit function); the effect of this subsection is to allow, for wholly intrastate firms, mixed firms of CPAs and PAs. However, because when some partners, officers, shareholders, members or managers are in other states they are required to have a certificate, interstate firms of mixed character would not be entitled to firm permits.

(2) Any licensee who is responsible for supervising attest services and signs the accountant's report on the financial statements on behalf of the firm, must comply with the appropriate experience requirements for such services as required by professional standards.

COMMENT: Because of the greater sensitivity of attest services, professional standards should set out an appropriate experience requirement for those who supervise them and sign attest reports.

(d) An applicant for initial issuance or renewal of a permit to practice under this Section shall be required to register each office of the firm within this State with the Board and to show that each such office is under the charge of a person holding a valid certificate

- issued under Section 6 of this Act or the corresponding provision of prior law or some other state.
- (e) The Board shall charge a fee for each application for initial issuance or renewal of a permit under this Section in an amount prescribed by the Board by rule.
- (f) Applicants for initial issuance or renewal of permits under this Section shall in their application list all states in which they have applied for or hold permits ~~to practice public accountancy as CPA firms and list any past denial, revocation or suspension of a permit by any other state,~~ and each holder of or applicant for a permit under this Section shall notify the Board in writing, within 30 days after its occurrence, of any change in the identities of partners, officers, shareholders, members or managers ~~who work regularly within whose principal office is in this State,~~ any change in the number or location of offices within this State, any change in the identity of the persons in charge of such offices, and any issuance, denial, revocation, or suspension of a permit by any other state.
- (g) Firms which fall out of compliance with the provisions of the section due to changes in firm ownership or personnel, after receiving or renewing a permit, shall take corrective action to bring the firm back into compliance as quickly as possible. The State Board may grant a reasonable period of time for a firm to take such corrective action. Failure to bring the firm back into compliance within a reasonable period as defined by the Board will result in the suspension of the firm permit.
- (gh) The Board may by rule require, on either a uniform or a random basis, as a condition to renewal of permits under this Section, that applicants undergo, no more frequently than once every three years, ~~peer quality~~ reviews conducted in such manner as the Board may specify, ~~provided, however, and such review shall include a verification that individuals in the firm who are responsible for attest services and sign the accountant's report on the financial statements on behalf of the firm meet the experience requirements set out in the professional standards for such services, provided~~ that any such rule --
- (1) shall be promulgated reasonably in advance of the time when it first becomes effective;
 - (2) shall include reasonable provision for compliance by an applicant showing that it has, within the preceding three years, undergone a ~~peer quality~~ review that is a satisfactory equivalent to ~~peer quality~~ review generally required pursuant to this subsection (h);
 - (3) shall require, with respect to ~~peer quality~~ reviews contemplated by paragraph (2), that they be subject to oversight by an oversight body established or sanctioned by Board rule, which body shall periodically report to the Board on the effectiveness

of the review program under its charge, and provide to the Board a listing of firms that have participated in a peer quality review program that is satisfactory to the Board; and

- (4) shall require, with respect to peer quality reviews contemplated by paragraph (2), that the peer quality review processes be operated and documents maintained in a manner designed to preserve confidentiality, and that neither the Board nor any third party (other than the oversight body) shall have access to documents furnished or generated in the course of the review.

COMMENT. The AICPA and NASBA both agree that periodic peer quality reviews are an important means of maintaining the general quality of professional practice.

In the interests of flexibility and of avoiding a sudden, wholesale imposition of requirements that could not effectively be met, this provision would give the Board latitude with regard to whether and when to require reviews and also with regard to whether, if they are required, they should be imposed uniformly upon all applicants for renewal, or only on a random basis. Paragraph (2) is intended to recognize that there are other valid reasons besides state regulation for which firms may undergo peer quality reviews (for example, as a condition to membership in the AICPA). It is also intended to avoid unnecessary duplication of such reviews, by providing for the acceptance of peer quality reviews performed by other groups of organizations whose work could be relied on by the Board. In the event a peer quality review requirement is established by the Board, paragraph (3) requires that the Board assure that there is adequate oversight of the equivalent reviews which are accepted by the Board, and paragraph (4) makes clear that the Board may not require access to the workpapers, report, letter of comments and response thereto related to reviews performed pursuant to other peer quality review programs that are in conformity with the provisions of this subsection. All of the materials developed in connection with such reviews should also be privileged as to any third parties. The oversight body will be allowed full access to the operations of the peer quality review process which is subject to oversight and will provide the Board with the names of those firms which have undergone and have had accepted a peer quality review as well as whether such firms are meeting the terms, conditions, and remedial actions, if any, required by the reviewing organization.

The term "peer quality review" is defined in section 3(ji).

SECTION 8

PUBLIC ACCOUNTANTS AND FIRMS OF PUBLIC ACCOUNTANTS

Persons who on the effective date of this Act hold registrations as public accountants issued under prior law of this State shall be entitled to have their registrations renewed upon fulfillment of the continuing professional education requirements for renewal of certificates set out in Section 6 of this Act, and on the renewal cycle and payment of fees there prescribed for renewal of certificates. Any registration not so renewed shall expire three years after the effective date of this Act. Firms of public accountants holding permits to practice **public accountancy as such** issued under prior law of this State shall be entitled to have their permits to practice renewed pursuant to the procedures, and subject to the requirements for renewal of permits to practice for firms of certified public accountants, set out in Section 7 of this Act. So long as such public accountant licensees hold valid registrations and permits to practice, they shall be entitled to engage in the practice of **public accountancy perform attest services** to the same extent as holders of certificates, and other holders of permits, and in addition they shall be entitled to use the designations "public accountants" and "PA," but no other designation, ~~in connection with the practice of public accountancy.~~ The holder of a registration issued under this Section may only **practice public accountancy perform attest services** in a firm that holds a permit issued under Section 7 of this Act.

COMMENT. This provision would be of use in jurisdictions where under the previous law a class of "grandfathered" public accountants was licensed to perform the audit function. Many accountancy laws now in effect have substantially more elaborate provisions to deal with public accountants, but a comparatively simple provision such as this one should be sufficient. Those coming within this provision would, like holders of certificates, be required to have a currently valid registration and permit to practice in order to ~~engage in the practice of public accountancy provide attest services~~, and they would be subject to the same continuing professional education requirements as apply for renewal of certificates and the same rules ~~respecting all aspects of the practice of public accountancy~~, as holders of certificates. They would in fact be treated the same as holders of certificates for virtually all purposes, the principal differences being in the titles they and their firms would be permitted to use, and in a lack of reciprocity to comparable licensees of other states (see comments following sections 6(c) and 7(c)). This section also makes it clear that public accountants may only **practice public accountancy perform attest services** in licensed firms.

SECTION 9

APPOINTMENT OF SECRETARY OF STATE AS AGENT

Application by a person or a firm not a resident of this State for a certificate under Section 6 of this Act or a permit to practice under Section 7 shall constitute appointment of the Secretary of State as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incidental to ~~the practice of public accountancy~~ services performed by the applicant within this State.

COMMENT. In many laws now in effect, a provision of this kind appears in each of the sections dealing with the issuance of a certificate or any form of permit. Since there are several such provisions in this Uniform Act (as there are in many existing laws), repetition is here avoided by having this single comprehensive provision.

SECTION 10

**ENFORCEMENT AGAINST HOLDERS OF CERTIFICATES, PERMITS,
AND REGISTRATIONS**

- (a) After notice and hearing pursuant to Section 12 of this Act, the Board may revoke any certificate, permit, or registration issued under Sections 6, 7 or 8 of this Act or corresponding provisions of prior law; suspend any such certificate, permit, or registration or refuse to renew any such certificate, permit, or registration for a period of not more than five years; reprimand, censure, or limit the scope of practice of any licensee; impose an administrative fine not exceeding \$1000, or place any licensee on probation, all with or without terms, conditions, and limitations, for any one or more of the following reasons:
- (1) Fraud or deceit in obtaining a certificate, permit or registration;
 - (2) Cancellation, revocation, suspension or refusal to renew ~~authority to engage in the practice of public accountancy~~ a license or practice rights for disciplinary reasons in any other state for any cause;
 - (3) Failure, on the part of a holder of a certificate or permit under Sections 6 or 7 or registration under Section 8, to maintain compliance with the requirements for issuance or renewal of such certificate, permit or registration or to report changes to the Board under Sections 6(f) or 7(f);
 - (4) Revocation or suspension of the right to practice before any state or federal agency;
 - (5) Dishonesty, fraud, or gross negligence in the ~~practice of public accountancy~~ performance of services as a licensee or in the filing or failure to file the licensee's own income tax returns;
 - (6) Violation of any provision of this Act or rule promulgated by the Board under this Act or violation of professional standards;
 - (7) Violation of any rule of professional conduct promulgated by the Board under Section 4(h)(4) of this Act;
 - (8) Conviction of a felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of this State, or of any other state if the acts involved would have constituted a crime under the laws of this State;
 - (9) Performance of any fraudulent act while holding a certificate or permit issued under this Act or prior law; and

(10) Any conduct reflecting adversely upon the licensee's fitness to ~~engage in the practice of public accountancy~~ perform services.

COMMENT. This provision departs from the typical corresponding provision of accountancy laws now in effect in two respects. One of these is the provision for an administrative fine of up to \$1000, in addition to other possible penalties. There is such a provision in some accountancy laws; whether such a provision is permissible in the laws of other states is a matter for individual determination in each jurisdiction.

The other departure from the common pattern is in paragraph (10), a catch-all provision which is phrased in terms of conduct reflecting adversely on the licensee's fitness to ~~engage in the practice of public accountancy~~, perform services rather than the broader and vaguer conventional phrase, "conduct discreditable to the accounting profession." This narrower provision is intended to avoid problems of vagueness and overbreadth. A similar change is involved in the requirement of "good character" in section 5(b).

(b) In lieu of or in addition to any remedy specifically provided in subsection (a) of this Section, the Board may require of a licensee--

- (1) A peer quality review conducted in such fashion as the Board may specify; and/or**
- (2) Satisfactory completion of such continuing professional education programs as the Board may specify.**

COMMENT. This subsection is intended to provide rehabilitative remedies for enforcement proceedings against licensees, in addition to (or in place of) the more traditional punitive remedies provided in subsection (a). The term "peer quality review" is defined in section 3 (j).

(c) In any proceeding in which a remedy provided by subsections (a) or (b) of this Section is imposed, the Board may also require the respondent licensee to pay the costs of the proceeding.

COMMENT. This provision appears appropriate in terms of both equity and the economics of Board operations.

SECTION 11

ENFORCEMENT PROCEDURES--INVESTIGATIONS

- (a) The Board may, upon receipt of a complaint or other information suggesting violations of this Act or of the rules of the Board, conduct investigations to determine whether there is probable cause to institute proceedings under Sections 12, 15, or 16 of this Act against any person or firm for such violation, but an investigation under this Section shall not be a prerequisite to such proceedings in the event that a determination of probable cause can be made without investigation. In aid of such investigations, the Board or the chairperson thereof may issue subpoenas to compel witnesses to testify and/or to produce evidence.
- (b) The Board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation. Upon completion of an investigation, the investigating officer shall file a report with the Board. The Board shall find probable cause or lack of probable cause upon the basis of the report or shall return the report to the investigating officer for further investigation. Unless there has been a determination of probable cause, the report of the investigating officer, the complaint, if any, the testimony and documents submitted in support of the complaint or gathered in the investigation, and the fact of pendency of the investigation shall be treated as confidential information and shall not be disclosed to any person except law enforcement authorities and, to the extent deemed necessary in order to conduct the investigation, the subject of the investigation, persons whose complaints are being investigated, and witnesses questioned in the course of the investigation.
- (c) Upon a finding of probable cause, if the subject of the investigation is a licensee, the Board shall direct that a complaint be issued under Section 12 of this Act, and if the subject of the investigation is not a licensee, the Board shall take appropriate action under Sections 15 or 16 of this Act. Upon a finding of no probable cause, the Board shall close the matter and shall thereafter release information relating thereto only with the consent of the person or firm under investigation.
- (d) The Board may review the publicly available professional work of licensees on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular licensee. In the event that as a result of such review the Board discovers reasonable grounds for a more specific investigation, the Board may proceed under subsections (a) through (c) of this Section.

COMMENT. This provision contemplates "positive enforcement," which is to say review of the professional work of licensees without any triggering requirement of receipt of complaints.

SECTION 12

ENFORCEMENT PROCEDURES--HEARINGS BY THE BOARD

(a) In any case where probable cause with respect to a violation by a licensee has been determined by the Board, whether following an investigation under Section 11 of this Act, or upon receipt of a written complaint furnishing grounds for a determination of such probable cause, or upon receipt of notice of a decision by the Board of Accountancy of another state furnishing such grounds, the Board shall issue a complaint setting forth appropriate charges and set a date for hearing before the Board on such charges. The Board shall, not less than 30 days prior to the date of the hearing, serve a copy of the complaint and notice of the time and place of the hearing upon the licensee, together with a copy of the Board's rules governing proceedings under this Section, either by personal delivery or by mailing a copy thereof by registered mail to the licensee at the licensee's address last known to the Board.

(b) A licensee against whom a complaint has been issued under this Section shall have the right, reasonably in advance of the hearing, to examine and copy the report of investigation, if any, and any documentary or testimonial evidence and summaries of anticipated evidence in the Board's possession relating to the subject matter of the complaint. The Board's rules governing proceedings under this Section shall specify the manner in which such right may be exercised.

COMMENT. Although the procedures followed by many Boards of accountancy now include, on either a formal or an informal basis, prehearing disclosure to the respondent of the evidence that will be offered in support of a complaint, it seems desirable to embody so fundamental a procedural right in the governing statute.

(c) In a hearing under this Section the respondent licensee may appear in person (or, in the case of a firm, through a partner, officer, director, shareholder, member or manager) and/or by counsel, examine witnesses and evidence presented in support of the complaint, and present evidence and witnesses on the licensee's own behalf. The licensee shall be entitled, on application to the Board, to the issuance of subpoenas to compel the attendance of witnesses and the production of documentary evidence.

(d) The evidence supporting the complaint shall be presented by the investigating officer, by a Board member designated for that purpose, or by counsel. A Board member who presents the evidence, or who has conducted the investigation of the matter under Section 11 of this Act, shall not participate in the Board's decision of the matter.

COMMENT. The provision disqualifying a Board member who presents the evidence or who has investigated the case from participating in the Board's decision of the case again reflects common practice, but like subsection (b) it appears to involve a sufficiently fundamental point to merit explicit

mention in the statute. The purpose is, of course, to separate the prosecutorial and adjudicative functions of the Board.

Some or all of the procedural matters of this kind included in this Uniform Act may be dealt with by statutes of general applicability, such as Administrative Procedure Acts, and so be unnecessary for inclusion in an accountancy law.

- (e) **In a hearing under this Section the Board shall be advised by counsel, who shall not be the same counsel who presents or assists in presenting the evidence supporting the complaint under subsection (d) of this Section.**

COMMENT. The comments under subsection (d) are applicable here also. It should be noted that this provision would not require two lawyers in all cases: It simply requires that if there is counsel involved in presenting the complaint, in addition to counsel advising the Board, it must not be the same counsel. If there were two counsel, they might both be provided by the state attorney general's office, so long as they were firmly insulated from each other.

- (f) **In a hearing under this Section the Board shall not be bound by technical rules of evidence.**

- (g) **In a hearing under this Section a stenographic or electronic record shall be made and filed with the Board. A transcript need not be prepared unless review is sought under subsection (j) of this Section or the Board determines that there is other good cause for its preparation.**

- (h) **In a hearing under this Section a recorded vote of a majority of all members of the Board then in office (excluding members disqualified by reason of subsection (d) of this Section) shall be required to sustain any charge and to impose any penalty with respect thereto.**

- (i) **If, after service of a complaint and notice of hearing as provided in subsection (a) of this Section, the respondent licensee fails to appear at the hearing, the Board may proceed to hear evidence against the licensee and may enter such order as it deems warranted by the evidence, which order shall be final unless the licensee petitions for review thereof under subsection (j) of this Section, provided, however, that within thirty days from the date of any such order, upon a showing of good cause for the licensee's failure to appear and defend, the Board may set aside the order and schedule a new hearing on the complaint, to be conducted in accordance with applicable subsections of this Section.**

- (j) **Any person or firm adversely affected by any order of the Board entered after a hearing under this Section may obtain review thereof by filing a written petition for review with the _____ Court within thirty days after the entry of said order. The procedures for review and the scope of the review shall be as specified in [State Administrative**

Procedure Act, or other statute providing for judicial review of actions of administrative agencies].

COMMENT. This provision would depart from the pattern of some accountancy laws now in effect in providing that, where a decision of the Board is appealed to a court, the court will not conduct a trial de novo but rather will review the Board's decision on the same basis as ordinarily applies in cases of judicial review of decisions by administrative agencies: That is, reversal will be based on errors of law or procedure, or on a lack of substantial evidence to support factual determinations. If in a given state there is no Administrative Procedure Act or analogous statute, it will be necessary to spell out the standards and procedures in this provision.

The right of appeal is not limited to persons or firms against whom disciplinary proceedings are specifically directed but includes anyone who is "adversely affected." Thus, for example, a partner in a firm that was subjected to discipline in a given case, or a firm of which a partner was disciplined, might be adversely affected by the Board's order so as to be entitled to appeal it.

(k) In any case where the Board renders a decision imposing discipline against a licensee under this Section and Section 10 of this Act, the Board shall examine its records to determine whether the licensee holds a certificate or a permit to practice public accountancy in any other state; and if so, the Board shall notify the Board of Accountancy of such other state of its decision, by mail, within forty-five days of rendering the decision. The Board may also furnish information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the licensee. Where a petition for review has been filed pursuant to Section 12(j), the notification and furnishing of information provided for in this subsection shall await the resolution of such review and, if resolution is in favor of the licensee, no such notification or furnishing of information shall be made.

COMMENT. The forty-five-day period of delay here specified, before a Board which has rendered a disciplinary decision on a certificate, registration, or permit notifies Boards of other states of the decision, is intended to be longer than the period for the filing of an appeal to the courts from a decision of the Board and thus to avoid requiring such notification in cases where an appeal has been taken but not yet resolved. The period for taking such an appeal is specified in section 12(j) as thirty days, which accounts for the forty-five-day period here. If the time for filing such an appeal specified in the accountancy law (or in a statute of general applicability) was other than thirty days, the period appropriate for this provision might differ correspondingly.

SECTION 13
REINSTATEMENT

- (a) In any case where the Board has suspended or revoked a certificate or a permit or registration or refused to renew a certificate, permit, or registration, the Board may, upon application in writing by the person or firm affected and for good cause shown, modify the suspension, or reissue the certificate, permit, or registration.
- (b) The Board shall by rule specify the manner in which such applications shall be made, the times within which they shall be made, and the circumstances in which hearings will be held thereon.
- (c) Before reissuing, or terminating the suspension of, a certificate, permit or registration under this Section, and as a condition thereto, the Board may require the applicant therefor to show successful completion of specified continuing professional education; and the Board may make the reinstatement of a certificate, permit or registration conditional and subject to satisfactory completion of a peer quality review conducted in such fashion as the Board may specify.

COMMENT. The term "peer quality review" is defined in section 3(ji).

SECTION 14
UNLAWFUL ACTS

- (a) No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall issue a report on financial statements of any other person, firm, organization, or governmental unit nor perform any attest service, as defined herein. This prohibition does not apply to an officer, partner, member, manager or employee of any firm or organization affixing that person's own signature to any statement or report in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein; nor prohibit any act of a public official or employee in the performance of that person's duties as such; nor prohibit the performance by any person of other services involving the use of accounting skills, including the preparation of tax returns, management advisory services, and the preparation of financial statements without the issuance of reports thereon.

COMMENT. This provision, giving application to the definition of report in section 3(k) above, is the cornerstone prohibition of the Uniform Act, reserving the performance of those professional services calling upon the highest degree of professional skill and having greatest consequence for persons using financial statements--namely, the audit function and other attest services as defined herein -- to licensees. It is so drafted as to make as clear and emphatic as possible the limited nature of this exclusively reserved function and the rights of unlicensed persons to perform all other functions.

- ~~(b) The prohibition contained in subsection (a) of this Section is applicable to issuance, by a person not holding a valid certificate, or a registration or a firm not holding a valid permit, of a report using any form of language conventionally used by licensees respecting a review of financial statements.~~

COMMENT. This provision is also intended to extend the reservation of the audit function to other attest services to another kind of professional work that also calls for special skills and carries carry particular consequence for users of financial statements, albeit in each respect to a lesser degree than the audit function: namely, the issuance of reports on compilations and reviews of financial statements. In accordance with the AICPA's Statements on Standards for Accounting and Review Services No. 1 (SSARS-1) which sets out the standards to be met in such a compilation or review and specifies a specify the form of report to be issued following such a review; engagements which report makes explicit reference to the applicable standards. The reference in this subsection to a "form of language conventionally used by licensees" is intended to prevent issuance by nonlicensees of reports using that standard language or language deceptively similar to it. The prohibition is also applicable with respect to compilations using SSARS language or language deceptively similar to it. Safe harbor language which may be used by non-licensees is set out in Rule 14-3.

Because the reasons for prohibiting unlicensed persons from the issuing of reports on reviews and on compilations (dealt with in subsection (c) below), though similar in kind to those that require prohibiting such persons to issue audit reports, are less compelling in degree (since lesser levels of assurance are involved), it seems sensible to set out these additional prohibitions in separate subsections.

~~(c) — The prohibition contained in subsection (a) of this Section is applicable to issuance, by a person not holding a valid certificate or registration or a firm not holding a valid permit, of a report using any form of language conventionally used by licensees with respect to a compilation of financial statements.~~

COMMENT. See the comment following subsection (b).

~~(d)(b)~~ No person not holding a valid certificate shall use or assume the title or designation "certified public accountant," or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant.

COMMENT. This subsection prohibits the use by persons not holding certificates of the two titles, "certified public accountant" and "CPA," that are specifically and inextricably tied to the granting of a certificate as certified public accountant under section 6.

~~(e)(c)~~ No firm shall practice public accountancy provide attest services or assume or use the title or designation "certified public accountants," or the abbreviation "CPAs," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of certified public accountants, a CPA firm unless (1) the firm holds a valid permit issued under Section 7 of this Act, and (2) all partners, officers, members, managers and shareholders of the firm hold certificates ownership of the firm is in accord with this Act and rules promulgated by the Board.

COMMENT. Like the preceding subsection, this one restricts use of the two titles "certified public accountants" and "CPAs," but in this instance by firms, requiring the holding of a firm permit to practice. It also restricts unlicensed firms from practicing public accountancy providing attest services.

~~(f)(d)~~ No person shall assume or use the title or designation "public accountant," or the abbreviation "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless that person holds a valid registration issued under Section 8 of this Act.

COMMENT. This subsection, and the one that follows, reserve the title "public accountant" and its abbreviation in the same fashion as subsections (d**h**) and (e**c**) do for the title "certified public accountant" and its abbreviation. The two provisions would of course only be required in a jurisdiction where there were grandfathered public accountants as contemplated by section 8.

(g)(e) **No firm not holding a valid permit issued under Section 7 of this Act shall practice public-accountancy provide attest services or assume or use the title or designation "public accountant," the abbreviation "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such firm is composed of public accountants.**

COMMENT. See the comments following subsections (e**c**) and (f**d**).

(h)(f) **No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant," or any other title or designation likely to be confused with the titles "certified public accountant" or "public accountant," or use any of the abbreviations "CA," "LA," "RA," "AA," or similar abbreviation likely to be confused with the abbreviations "CPA" or "PA." The title "Enrolled Agent" or "EA" may only be used by individuals so designated by the Internal Revenue Service.**

COMMENT. This provision is intended to supplement the prohibitions of subsections (d**h**) through (g**e**) on use of titles by prohibiting other titles that may be misleadingly similar to the titles specifically reserved to licensees or that otherwise suggest that their holders are licensed.

(i)(g) **No person or firm not holding a valid certificate, permit or registration issued under Sections 6, 7, or 8 of this Act shall assume or use any title or designation that includes the words "accountant," "auditor," or "accounting," in connection with any other language (including the language of a report) that implies that such person or firm holds such a certificate, permit, or registration or has special competence as an accountant or auditor, provided, however, that this subsection does not prohibit any officer, partner, member, manager or employee of any firm or organization from affixing that person's own signature to any statement in reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds therein nor prohibit any act of a public official or employee in the performance of the person's duties as such.**

COMMENT. Like the preceding subsection, this provision is intended to supplement the prohibitions of subsections (d**h**) through (g**e**), by prohibiting other titles which may be misleadingly similar to the specifically reserved titles or that otherwise suggest licensure. In the interest of making the prohibition against the issuance by unlicensed persons of reports on audits, reviews, and compilations as tight and

difficult to evade as possible, there is also some overlap between this provision and the prohibitions in subsections (a) through (e).

(j)(h) No person holding a certificate or registration or firm holding a permit under this Act shall engage in the practice of public accountancy using use a professional or firm name or designation that is misleading about the legal form of the firm, or about the persons who are partners, officers, members, managers or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners, members, managers or shareholders may be included in the name of a firm or its successor.

COMMENT. This prohibition with regard to misleading firm names reflects a provision commonly found in ethical codes. Unlike the typical such provision, however, it does not permit a person in a firm surviving the death or withdrawal of all other persons in the firm to continue to practice under the firm name after becoming a sole practitioner. The reason for allowing such continued use of a firm name is, of course, equity to the surviving practitioner, but the countervailing consideration, which dictated its omission here, is that by suggesting the existence of a multi-person firm when in fact there is only a sole proprietorship, such a name is inherently misleading. As a practical matter, of course, in such circumstances there would be a grace period simply because no enforcement action would be brought immediately after the death of the former person in the firm, but a fixed grace period of extended duration appears unnecessary.

(k)(i) None of the foregoing provisions of this Section shall have any application to a person or firm holding a certification, designation, degree, or license granted in a foreign country entitling the holder thereof to engage in the practice of public accountancy or its equivalent in such country, whose activities in this State are limited to the provision of professional services to persons or firms who are residents of, governments of, or business entities of the country in which the person holds such entitlement, who performs no attest services as defined and who issues no reports with respect to the financial statements of any other persons, firms, or governmental units in this State, and who does not use in this State any title or designation other than the one under which the person practices in such country, followed by a translation of such title or designation into the English language, if it is in a different language, and by the name of such country.

COMMENT. The right spelled out in this provision, of foreign licensees to provide services in the state to foreign-based clients, looking to the issuance of reports only in foreign countries, is essentially what foreign licensees have a right to do under most laws now in effect, simply because no provision in those laws restricts such a right. Insofar as ~~the~~ The foreign titles used by foreign licensees might otherwise run afoul of standard prohibitions with respect to titles (such as one on titles misleadingly similar to "CPA"), on the other hand, but this provision would grant a dispensation not found in most laws now in force.

~~(j)~~(j) No holder of a certificate issued under Section 6 of this Act or a registration issued under Section 8 of this Act shall ~~practice public accountancy~~ perform attest services in any firm that does not hold a valid permit issued under Section 7 of this Act.

COMMENT. See the comments following sections 6(a), 7(a) and 8.

~~(m)~~(k) Nothing herein shall prohibit a practicing attorney or firm of attorneys from preparing or presenting records or documents customarily prepared by an attorney or firm of attorneys in connection with the attorney's professional work in the practice of law.

(l) (1) A licensee shall not for a commission recommend or refer to a client any product or service, or for a commission recommend or refer any product or service to be supplied by a client, or receive a commission, when the licensee also performs for that client,

(a) an audit or review of a financial statement; or

(b) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(c) an examination of prospective financial information.

This prohibition applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in such listed services.

(2) A licensee who is not prohibited by this section from performing services for or receiving a commission and who is paid or expects to be paid a commission shall disclose that fact to any person or entity to whom the licensee recommends or refers a product or service to which the commission relates.

(3) Any licensee who accepts a referral fee for recommending or referring any service of a licensee to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

(m) (1) A licensee shall not:

(a) perform for a contingent fee any professional services for, or receive such a fee from a client for whom the licensee or the licensee's firm performs,

(i) an audit or review of a financial statement; or

(ii) a compilation of a financial statement when the licensee expects, or reasonably might expect, that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or

(iii) an examination of prospective financial information; or

(b) Prepare an original or amended tax return or claim for a tax refund for a contingent fee for any client.

(2) The prohibition in (1) above applies during the period in which the licensee is engaged to perform any of the services listed above and the period covered by any historical financial statements involved in any such listed services.

(3) Except as stated in the next sentence, a contingent fee is a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. Solely for purposes of this section, fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending, for example, on the complexity of services rendered.

COMMENT: Section 14(l) on commissions is based on Rule 503 of the AICPA Code of Professional Conduct. Section 14(m) on contingent fees is based on Rule 302 of the AICPA Code of Professional Conduct.

SECTION 15
INJUNCTIONS AGAINST UNLAWFUL ACTS

Whenever, as a result of an investigation under Section 11 of this Act or otherwise, the Board believes that any person or firm has engaged, or is about to engage, in any acts or practices which constitute or will constitute a violation of Section 14 of this Act, the Board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the Board that such person or firm has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or other order as may be appropriate shall be granted by such court.

SECTION 16
CRIMINAL PENALTIES

- (a) Whenever, by reason of an investigation under Section 11 of this Act or otherwise, the Board has reason to believe that any person or firm has knowingly engaged in acts or practices that constitute a violation of Section 14 of this Act, the Board may bring its information to the attention of the Attorney General of this State (or other appropriate law enforcement officer) who may, in the officer's discretion, cause appropriate criminal proceedings to be brought thereon.
- (b) Any person or firm who knowingly violates any provision of Section 14 of this Act shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine of not more than \$_____ or to imprisonment for not more than one year, or to both such fine and imprisonment.

COMMENT. The word "knowingly" is included in this provision to assure that criminal penalties will not be applied in the absence of conscious wrongdoing.

SECTION 17
SINGLE ACT EVIDENCE OF PRACTICE

In any action brought under Sections 12, 15, or 16 of this Act, evidence of the commission of a single act prohibited by this Act shall be sufficient to justify a penalty, injunction, restraining order, or conviction, respectively, without evidence of a general course of conduct.

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SECTION 18
CONFIDENTIAL COMMUNICATIONS

Except by permission of the client engaging a licensee under this Act, or the heirs, successors, or personal representatives of such client, a licensee or any partner, officer, member, manager, shareholder, or employee of a licensee shall not voluntarily disclose information communicated to the licensee by the client relating to and in connection with services rendered to the client by the licensee ~~in the practice of public accountancy~~. Such information shall be deemed confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under Sections 11 or 12 of this Act, in ethical investigations conducted by private professional organizations, or in the course of peer quality reviews.

COMMENT. This provision is similar to those found in a number of accountancy laws as well as ethical codes recognizing the confidentiality of client communications to accountants without, however, extending it to the point of being an evidentiary privilege (which would prevent its disclosure in court in certain circumstances--essentially, those in which the licensee is not a party, such as divorce proceedings where one of the parties is a client of the licensee). The term "peer quality review" is defined in section 3(ji).

SECTION 19
LICENSEES' WORKING PAPERS; CLIENTS' RECORDS

- (a) All statements, records, schedules, working papers, and memoranda made by a licensee or a partner, shareholder, officer, director, member, manager or employee of a licensee, incident to, or in the course of, rendering services to a client ~~in the practice of public accountancy~~, except the reports submitted by the licensee to the client and except for records that are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. No such statement, record, schedule, working paper, or memorandum shall be sold, transferred, or bequeathed, without the consent of the client or the client's personal representative or assignee, to anyone other than one or more surviving partners, stockholders, members or new partners, new stockholders, or new members of the licensee, or any combined or merged firm or successor in interest to the licensee. Nothing in this Section should be construed as prohibiting any temporary transfer of workpapers or other material necessary in the course of carrying out peer quality reviews or as otherwise interfering with the disclosure of information pursuant to Section 18.

COMMENT. It should be noted that this provision, which is a fairly standard one in accountancy laws, prohibits the transfer of working papers relating to a particular client without that client's consent in connection with the sale of a practice. The language regarding peer quality review is intended to harmonize this section with Section 18 and make it clear that no licensee, partner, shareholder, officer, director, member, manager or employee of a licensee may withhold any material that might be needed to perform a peer quality review nor interfere with any other disclosure not prohibited by section 18.

- (b) A licensee shall furnish to a client or former client, upon request and reasonable notice--
- (1) A copy of the licensee's working papers, to the extent that such working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and
- (2) Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account; the licensee may make and retain copies of such documents of the client when they form the basis for work done by the licensee.

COMMENT. This subsection reflects a commonly recognized ethical obligation. It seems of sufficient importance to deserve incorporation in the statute.

- (c) Nothing herein shall require a licensee to keep any workpaper beyond the period prescribed in any other applicable statute.

COMMENT. This subsection is designed to make clear that section 19 does not impose any new
record retention requirement. The retention period may be based on the licensee's professional
judgment and any existing law.

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SECTION 20
PRIVITY OF CONTRACT

- (a) This Section applies to all causes of action of the type specified herein filed on or after the effective date.
- (b) This Section governs any action based on negligence brought against any accountant or firm of accountants practicing in this State by any person or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant or in the course of an engagement to provide other ~~public accountancy~~ services.
- (c) No action covered by this Section may be brought unless:
- (1) The plaintiff (1) is issuer (or successor of the issuer) of the financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant and (2) engaged the defendant accountant to examine, compile, review, certify, audit or otherwise report or render an opinion on such financial statements or to provide other ~~public accountancy~~ services; or
- (2) The defendant ~~accountant~~ licensee or firm: (1) was aware at the time the engagement was undertaken that the financial statements or other information were to be made available for use in connection with a specified transaction by the plaintiff who was specifically identified to the defendant accountant, (2) was aware that the plaintiff intended to rely upon such financial statements or other information in connection with the specified transaction, and (3) had direct contact and communication with the plaintiff and expressed by words or conduct the defendant accountant's understanding of the reliance on such financial statements or other information.

COMMENT. This section embodies the common law rule that only persons in a relationship of privity of contract (i.e., a direct contractual relationship), or a relationship so close as to approach that of privity, may sue an accountant for negligence. This rule is derived from the seminal decision of Chief Justice Cardozo of the N.Y. Court of Appeals in *Ultramares Corporation v. Touche*, 255 N.Y. 170 (1931), which was reaffirmed by that court in *Credit Alliance v. Arthur Andersen & Co.*, 65 N.Y. 2D 536 (1985). The provision above is specific to accountants and for that reason it has been included in this Uniform Accountancy Act, which is intended to be comprehensive. In some states, it may be more appropriate to include the above provision in some other chapter of state law rather than in the accountancy statute. ~~Services constituting the practice of public accountancy are defined in section 3 of this Act.~~

SECTION 21
UNIFORM STATUTE OF LIMITATIONS

- (a) This Section applies to all causes of action of the type specified herein filed on or after the effective date.
- (b) This Section governs any action based on negligence or breach of contract brought against any accountant, or any accounting firm practicing in this State by any person or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant as a result of an engagement to provide public accountancy services.
- (c) No action covered by this Section may be brought unless the suit is commenced on or before the earlier of:
- (1) one year from the date the alleged act, omission or neglect is discovered or should have been discovered by the exercise of reasonable diligence;
 - (2) three years after completion of the service for which the suit is brought has been performed; or
 - (3) three years after the date of the initial issuance of the accountant's report on the financial statements or other information.

COMMENT. This section establishes a uniform statute of limitations for accountants' negligence and breach of contracts actions of one year from the date of discovery of the claim, but in no event more than three years from the date of the completion of the accounting services that are the subject of complaint or date of the initial issuance of the accountant's report, whichever is earliest. It is intended to reduce the uncertainty attending potential liability exposure under differing state limitations periods. The provision above is specific to accountants and for that reason it has been included in this Uniform Accountancy Act, which is intended to be comprehensive. In some states, it may be more appropriate to include the above provision in some other chapter of state law rather than in the accountancy statute. Services constituting the practice of public accountancy are set out in section 3(i).

SECTION 22
PROPORTIONATE LIABILITY

- (a) This Section applies to all causes of action of the type specified herein filed on or after the effective date.
- (b) This Section governs any claim for money damages brought against any accountant licensee; or any accounting firm registered, licensed, or practicing in this State; or any employee or principal of such firm by any person or entity claiming to have been injured ~~as a result of the practice of public accountancy~~ by the defendant accountant or other person or entity.
- (c) No judgment for money damages may be entered against any accountant licensee, firm, employee, or principal described in subsection (b) (collectively referred to in this subsection as the "accountant") in an action covered by this Section except in accordance with the provisions of this subsection.
- (1) If the party seeking a judgment for damages against the accountant proves that the accountant licensee acted with the deliberate intent to deceive, manipulate or defraud for the accountant's own direct pecuniary benefit, the liability of the accountant licensee shall be determined according to the principles that generally apply to such an action.
- (2) If the accountant licensee is not proven to have acted with the deliberate intent to deceive, manipulate or defraud for the accountant's own direct pecuniary benefit, the amount of the accountant's liability in damages shall be determined as follows:
- (A) The trier of fact shall determine the percentage of responsibility of the plaintiff, of each of the defendants, and of each of the other persons or entities alleged by the parties to have caused or contributed to the harm alleged by the plaintiff. In determining the percentages of responsibility, the trier of fact shall consider both the nature of the conduct of each person and the nature and extent of the causal relationship between that conduct and the damage claimed by the plaintiff.
- (B) The trier of fact shall next determine the total amount of damage suffered by the plaintiff caused in whole or in part by the plaintiff, the defendants, and other persons alleged to have caused or contributed to the damage.
- (C) The trier of fact shall then multiply the percentage of responsibility of the accountant licensee (determined under (A)) by the total amount of damages (determined under (B)) and shall enter a judgment or verdict against the

accountant licensee in an amount no greater than the product of those two factors.

- (D) In no event shall the damages awarded against or paid by an **accountant licensee** exceed the amount determined under (C). The **accountant licensee** shall not be jointly liable on any judgment entered against any other party to the action.
- (E) Except where a contractual relationship permits, no defendant shall have a right to recover from an **accountant a licensee** any portion of the percentage of damages assessed against such other defendant.

COMMENT. This section establishes a general principle of proportionate liability in all actions for money damages (both common law and statutory) against accountants except fraud actions. (Fraud actions would continue to be governed by generally applicable rules.) An accountant would be liable for the portion of the plaintiff's injury caused by the accountant's conduct; the accountant would not be required to compensate the plaintiff for harm caused by others. Accountants' liability cases frequently involve situations in which an accountant issues a report on the financial statements of a company that subsequently becomes insolvent or has serious financial difficulties. Investors or creditors who allegedly relied on the audit report sue the accountant and the company. Because the company is often either bankrupt or has no available assets, the accountant is--in a disproportionately large number of cases--the only solvent defendant left to answer the damages claim. Under a rule of joint and several liability, the accountant would be required to bear the burden of the entire damages award, even if the harm was caused principally by others such as the company's management. This provision is intended to prevent that unfair result. The provision above is specific to accountants and, for that reason, it has been included in this Uniform Accountancy Act which is intended to be comprehensive. In some states, it may be more appropriate to include the above provision in some other chapter of state law rather than in the accountancy statute. The practice of public accountancy is defined in section 3(i).

SECTION 23

Substantial Equivalency:

Practice Rights, Reciprocity and Discipline for Certificate Holders and Licensed Firms from States whose Accountancy Statutes are Substantially Equivalent to the Requirements Set Out in This Act

- (a)(1) An individual whose principal office is not in this state having a valid certificate or license as a Certified Public Accountant from any United States jurisdiction which the NASBA National Qualification Appraisal Service has verified to be in substantial equivalence with the CPA registration requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the rights and privileges of certificate holders and licensees of this state without the need to obtain a certificate under Sections 6 or 7. However, such individuals must notify the Board of their intent to enter the state under this provision.**
- (2) An individual whose principal office is not in this state having a valid certificate or license as a Certified Public Accountant from any United States jurisdiction which the NASBA National Qualification Appraisal Service has not verified to be in substantial equivalence with the CPA registration requirements of the AICPA/NASBA Uniform Accountancy Act shall be presumed to have qualifications substantially equivalent to this state's requirements and shall have all the rights and privileges of certificate holders and licensees of this state without the need to obtain a certificate or permit under Sections 6 or 7 if such individual obtains from the NASBA National Qualification Appraisal Service verification that such individual's CPA qualifications are substantially equivalent to the CPA registration requirements of the AICPA/NASBA Uniform Accountancy Act. However, such individuals must notify the Board of their intent to enter the state under this provision.**
- (b) As an alternative to the requirements of Section 6(c) of this Act, a certificate holder licensed by another state who establishes their principal place of employment in this state shall request the issuance of a certificate from the Board prior to establishing such principal place of employment. The Board shall issue a certificate to such person who meets the standards set out in subsection (a) of this section.**
- (c) The Board may charge a fee for issuance of certificates which are issued to those who establish their principal office in this state under this section.**
- (d) Persons requesting issuance of certificates under subsection (c) of this Section shall in their request list all states in which they have applied for or hold certificates, or licenses, and list any past denial, revocation or suspension of a certificate, or license and shall**

notify the Board in writing, within 30 days after its occurrence, of any issuance, denial, revocation, or suspension of a certificate or license by another state.

- (e) Upon issuance of a license under this Section, the licensee must comply with all applicable provisions of this Act.

COMMENT: Under this section, State Boards could utilize the NASBA National Qualification Appraisal Service for determining whether another state's certification criteria are "substantially equivalent" to the national standard outlined in the AICPA/NASBA Uniform Accountancy Act. If a state is determined to be "substantially equivalent," then individuals from that state would have ease of reciprocity and practice rights in other states. Individuals who personally meet the substantial equivalency standard may also apply to the National Qualification Appraisal Service if the state in which they are licensed is not substantially equivalent to the UAA.

Individual CPAs who practice across state lines or who service clients in another state via electronic technology, would not be required to obtain a reciprocal certificate or license if their state of original certification is deemed substantially equivalent, or if they are individually deemed substantially equivalent. The CPA merely must notify the Board of the state in which the service is being performed. However, licensure is required in the state of "principal employment." If a CPA relocates to another state and establishes their principal office in that state then they would be required to obtain a certificate in that state. Likewise, if a firm opens an office in a state they would be required to obtain a license in that state. With "substantial equivalency" established, however, this application process for the individual would essentially be routine and just a matter of filing an application and paying the appropriate fee.

As it relates to the notification requirement, states should consider the need for such a requirement since the nature of an enforcement complaint requires the identification of the CPA and a CPA practicing on the basis of substantial equivalency will be subject to enforcement action in any state as defined in Section 23(h).

Implementation of the "substantial equivalency" standard and creation of the National Qualification Appraisal Service will make a significant improvement in the current regulatory system and assist in accomplishing the goal of portability of the CPA designation and mobility of CPAs across state lines.

Sections 23(c) and (d) are intended to parallel Sections 6(e) and 6(f). Section 23(f) makes it clear that once individuals receive such reciprocity, they are subject to the laws of this state to the same extent as any other licensee.

(g) A licensee of this state performing services or using their CPA designation in another state shall be subject to disciplinary action in this state for an act committed in another state for which the licensee would have been subject to discipline had the act been committed in this state. Notwithstanding Section 11(a),

the Board shall be required to investigate any complaint made by the board of accountancy of another state.

(h) Any licensee of another state performing services or using their CPA designation in this state under subsection (a) of this section shall be subject to disciplinary action in this state, for any act(s) committed in this state which would subject a licensee of this state to disciplinary action.

COMMENT: These provisions are intended to allow State Boards to discipline licensees from other states that practice in their states under subsection (a) of this Section and to ensure that the Board from the licensee's state of principal employment, which has power to revoke a license, will have the authority to discipline its licensees if they violate the law when performing services outside the state of principal employment. Section (g) ensures that the state board of accountancy in the state of principal employment will be required to give consideration to complaints made by the boards of accountancy of other jurisdictions. The provisions of sections (g) and (h) are also applicable to CPA firms practicing across state lines under the substantial equivalency standard.

SECTION ~~23~~24

CONSTRUCTION; SEVERABILITY

If any provision of this Act or the application thereof to any person or entity or in any circumstances is held invalid, the remainder of the Act and the application of such provision to others or in other circumstances shall not be affected thereby.

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SECTION ~~24~~25
REPEAL OF PRIOR LAW

_____ (existing legislation) and all other acts or parts of acts in conflict herewith are hereby repealed, provided, however, that nothing contained in this Act shall invalidate or affect any action taken or any proceeding instituted under any law in effect prior to the effective date hereof.

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SECTION ~~25~~26
EFFECTIVE DATE

This Act shall take effect on _____.

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Uniform

Accountancy Act

Rules

National Association of State Boards of Accountancy

American Institute of Certified Public Accountants

Introductory Comments

These Uniform Accountancy Rules ("Rules") have been prepared by the National Association of State Boards of Accountancy ("NASBA") and the American Institute of Certified Public Accountants (AICPA) as part of their continuing effort to update and promote uniformity in the regulatory schemes governing the practice of accountancy in the various jurisdictions.

These Rules are keyed to the Uniform Accountancy Act ("Uniform Act") in several respects. Like most rules of administrative agencies they are intended in a general sense to implement or to explain specific statutory provisions governing the operations of the agency concerned; thus, in those cases where it appears appropriate for a Rule to contain a reference to a statutory provision, the reference provided in these Rules is to a provision of the Uniform Act. The organizing pattern of the Rules also reflects that of the Uniform Act: the numbered Articles under which the Rules are grouped correspond to section numbers in the Uniform Act.

The Rules are not intended to depend entirely upon the Uniform Act, or to be suitable for adoption only in jurisdictions where the accountancy law corresponds to the Uniform Act. Where the law that is in force varies from the Uniform Act, modifications may be necessary to adapt the Rules to the pertinent statute.

These Rules do not include a code of professional conduct. Since any such code promulgated by a Board of Accountancy would have the same status as a legal matter as any other rules promulgated by the Board, it would be entirely appropriate to include such a code in a set of Board rules of general application; and it would not be necessary to give it a separate designation as a code of conduct. On the other hand, a Board of Accountancy might well also wish to adopt a code of conduct following the models offered by NASBA or the AICPA without also adopting the remainder of the Rules, or might simply wish to publish such a code of conduct as a separate and self-contained unit.

Preamble

These Rules are adopted by the _____ Board of Accountancy, pursuant to its authority under the [Public] Accountancy Act of 19___. Their purpose is to promote and protect the public interest by implementing the provisions of that Act, which provide for the issuance and renewal of certificates as certified public accountants; the renewal of registrations to public accountants; the issuance and renewal of permits to firms ~~for the practice of public accountancy~~; and the regulation of ~~the practice of public accountancy~~ licensees, all to enhance the reliability of information which is used for guidance in financial transactions or accounting for or assessing the financial status or performance of commercial, noncommercial and governmental enterprises.

ARTICLE 3
DEFINITIONS

Rule 3-1 - Terms used in these rules.

For purposes of these Rules the following terms have the meanings indicated:

- (a) "Act" means the [Public] Accountancy Act of _____, _____
[statutory reference].
- (b) "Financial statements" means statements and footnotes related thereto that undertake to present an actual or anticipated financial position as of a point in time, or results of operations, cash flow, or changes in financial position for a period of time, in conformity with generally accepted accounting principles or another comprehensive basis of accounting. The term does not include incidental financial data included in management advisory service reports to support recommendations to a client; nor does it include tax returns and supporting schedules.

Rule 3-2 - Manager.

"Manager" when used in these Rules has the same meaning as the term "manager" in a limited liability company.

Rule 3-3 - Member.

"Member" when used in these Rules has the same meaning as the term "member" in a limited liability company.

Rule 3-4 - The statutory term "report."

This term, as defined in Section 3(k) of the Act and used in Sections 14(a), ~~(b)~~ and ~~(c)~~ of the Act, and in these Rules, includes forms of language contained in a report which refers to financial statements, when such forms of language express or deny any assurance as to the reliability of the financial statements to which it refers. Among the possible sources of such forms of language are pronouncements by authoritative bodies describing the work that should be performed and/or the responsibilities that should be assumed, for specified kinds of professional engagements, and in addition prescribing the form of report which should be issued upon completion of such engagements. A form of report prescribed by such a pronouncement will ordinarily constitute a form of language which is conventionally understood as implying assurance and expertise. For this reason, as provided in Sections 14~~(b)~~ and ~~(c)~~ of the Act, the term "report" includes the issuance of reports using the forms of language set out in the AICPA's Statement on Standards for Accounting and Review Services No. 1 (SSARS 1), for reports with respect to both "reviews" of financial statements, and also

1 compilations of financial statements, as well as the forms of language for "special reports" set
2 out in the AICPA's Statement on Auditing Standards No. 14, No. 35 and No. 62 (SAS 14, 35
3 and 62) or successor pronouncements.

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5 ~~Rule 3-5 - The statutory phrase "holding out to the public as a licensee."~~

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7 ~~"The phrase "holding out to the public as a licensee," as used in the definition of "practice of~~
8 ~~(or practicing) public accountancy" in Section 3(i) of the Act and in these Rules, means any~~
9 ~~representation of the fact that a licensee holds a certificate, registration or permit, made in~~
10 ~~connection with the performance or an offer to perform services for the public. Any such~~
11 ~~representation is presumed to invite the public to rely upon the professional skills implied by~~
12 ~~the certificate, registration or permit in connection with the professional services offered to be~~
13 ~~performed by the licensee. For purposes of this Rule, a representation shall be deemed to~~
14 ~~include any oral or written communication conveying the fact that the licensee holds a~~
15 ~~certificate, registration or permit, including without limitation the use of titles or legends on~~
16 ~~letterheads, business cards, office doors, advertisements and listings, or the displaying of such~~
17 ~~certificates, registrations or permits.~~

18
19 ~~Rule 3-6 - The statutory phrase "services involving the use of accounting or auditing skills."~~

20
21 ~~The phrase "services involving the use of accounting or auditing skills," as used in the~~
22 ~~definition of "practice of (or practicing) public accountancy" in Section 3(i) of the Act,~~
23 ~~includes the provision of advice or recommendations in connection with the sale or offer for~~
24 ~~sale of products, when the advice or recommendations require or imply the possession of~~
25 ~~accounting or auditing skills or expert knowledge in auditing or accounting.~~

ARTICLE 4
STATE BOARD OF ACCOUNTANCY

Rule 4-1 - Board meetings.

The Board shall meet at least ____ times each year. The chair or a quorum of the Board shall have the authority to call meetings of the Board. The Board shall follow and apply the rules of procedure, _____ [statutory reference], as regards notice and conduct of meetings.

Rule 4-2 - Election and tenure of officers.

The Board shall elect annually from among its members a chair, a vice-chair, and such other officers as the Board may require. The officers shall assume the duties of their respective offices at the conclusion of the meeting at which they were elected. They shall serve a term of one year, but shall be eligible for reelection.

Rule 4-3 - Duties of officers.

The chair or, in the event of the chair's absence or inability to act, the vice-chair shall preside at all meetings of the Board. The Board shall determine other duties of the officers.

Rule 4-4 - Fees.

Fees charged by the Board shall be as follows:

- | | | |
|-----|--|----------|
| (a) | Examination applications | \$_____ |
| (b) | Administration of examination, per section | \$ _____ |
| (c) | Initial issuance of certificate | \$_____ |
| (d) | Renewal of certificate or registration | \$_____ |
| (e) | Initial firm permits | \$_____ |
| (f) | Renewal of firm permits, except for sole practitioners | \$_____ |
| (g) | Renewal of firm permits for sole practitioners | \$_____ |
| (h) | Delinquency fee for permit, certificate or registration renewal applications | \$_____ |
| (i) | Copies of records, per page | \$_____ |

1 (j) Applications for reinstatement \$_____

2
3 (k) Annual reports of the Board, per copy \$_____

4
5 (l) Other fees (The Board may charge other fees as required) \$_____

6
7 **Rule 4-5 - Obligation of licensees to notify the Board of changes of address and other**
8 **information.**

9
10 **Each licensee shall notify the Board in writing within thirty (30) days of any change of address**
11 **or, in the case of individual licensees, change of employment.**

12
13 **Rule 4-6 - Communications.**

14
15 **A licensee shall respond in writing to any communication from the Board requesting a**
16 **response, within thirty (30) days of the mailing of such communication by registered or**
17 **certified mail, to the last address furnished to the Board by the licensee.**

ARTICLE 5
CERTIFIED PUBLIC ACCOUNTANTS

Rule 5-1 - Semester hour; accredited colleges, universities, schools and programs; credit for courses.

- (a) As used in these Rules, a "semester hour" means the conventional college semester hour. Quarter hours may be converted to semester hours by multiplying them by two-thirds.**
- (b) As used in these Rules, "accreditation" refers to the process of quality control of the education process. There are three different levels of accreditation referred to in these Rules and the degree to which the Board relies on accreditation differs according to the level at which the degree-granting institution is accredited. The three levels of accreditation are:**
 - (1) Level one accreditation (the educational institution) is granted to a four-year degree-granting college or university which is accredited by one or more recognized regional accrediting agencies (or successor agencies). _____ is a/are regional accrediting agency/ies recognized by the Board.**
 - (2) Level two accreditation (the business school) is granted to a business school or college of business that has been accredited by a national accreditation agency recognized by the Board such as the "American Assembly of Collegiate Schools of Business" (AACSB) following a specific and comprehensive review of their faculty, resources, and curricula. In evaluating a candidate's credentials, the Board may choose to rely on this accreditation as evidence that the institution's business school has met minimum overall standards of quality for such schools.**
 - (3) Level three accreditation (the accounting program or department) is granted to an accounting program or department that has been accredited by a national accreditation agency recognized by the Board such as the AACSB. Accounting programs or departments accredited in this manner have met standards substantially higher and much more specific than those required for level one or level two accreditation. For level three accreditation, the accounting program or department must meet a stringent set of standards that addresses faculty credentials, student quality, physical facilities, and curricula. Graduates who submit transcripts from accredited accounting programs may be deemed to have met the Board's specific accounting and business course requirements.**
- (c) A candidate is considered as graduating from an accredited educational institution if at the time the educational institution grants the applicant's degree, it is accredited at the appropriate level as outlined in these Rules.**

- 1 (d) If an educational institution was not accredited at the time an applicant's degree was
2 received but is so accredited at the time the application is filed with the Board, the
3 institution will be deemed to be accredited for the purpose of subsection (c), provided
4 that it --
5
6 (1) certifies that the applicant's total educational program would qualify the applicant
7 for graduation with a baccalaureate degree during the time the institution has been
8 accredited; and
9
10 (2) furnishes the Board satisfactory proof, including college catalogue course numbers
11 and descriptions, that the pre-accrediting courses used to qualify the applicant as
12 an accounting major are substantially equivalent to post-accrediting courses.
13
14 (e) If an applicant's degree was received at an accredited educational institution pursuant
15 to subsection (c) or (d), but the educational program which was used to qualify the
16 applicant as an accounting major included courses taken at non-accredited institutions,
17 either before or after graduation, such courses will be deemed to have been taken at the
18 accredited institution from which applicant's degree was received, provided the
19 accredited institution either--
20
21 (1) has accepted such courses by including them in its official transcript; or
22
23 (2) has certified to the Board that it will accept such courses for credit toward
24 graduation.
25
26 (f) A graduate of a four-year degree-granting college or university not accredited at the time
27 applicant's degree was received or at the time the application was filed will be deemed
28 to be a graduate of an accredited educational institution if--
29
30 (1) a credentials evaluation service approved by the Board certifies that the applicant's
31 degree is equivalent to a degree from an accredited educational institution defined
32 in subsection (b)(1); or
33
34 (2) (A) an accredited educational institution as defined by subsection (b)(1) accepts
35 applicant's non-accredited baccalaureate degree for admission to a graduate
36 business degree program;
37
38 (B) the applicant satisfactorily completes at least fifteen semester hours, or the
39 equivalent, in post-baccalaureate education at the accredited educational
40 institution, of which at least nine semester hours, or the equivalent, shall be
41 in accounting; and

1 (C) the accredited educational institution certifies that the applicant is in good
2 standing for the continuation in the graduate program, or has maintained a
3 grade point average in these courses that is necessary for graduation.
4

- 5 (g) The advanced subjects completed to qualify under subsection (f)(2) may not be used to
6 satisfy the requirements of section (h).
7
- 8 (h) The accounting and business concentration or equivalent contemplated by Section 5(c)
9 of the Act shall consist of the semester hours specified in Rule 5-2 below. No more than
10 6 hours will be recognized for internships or life experience.
11

12 **Rule 5-2 - Education requirement.**
13

14 For purposes of Section 5(c) of the Act, an applicant will be deemed to have met the education
15 requirement if the applicant has met any one of the following four conditions:
16

- 17 (a) Earned a graduate degree with a concentration in accounting from an accounting
18 program or department that is accredited (level three accreditation) by an accrediting
19 agency recognized by the Board.
20
- 21 (b) Earned a graduate degree from a business school or college of business that is accredited
22 (level two accreditation) by an accrediting agency recognized by the Board and
23 completed at least 24 semester hours in accounting at the undergraduate level or 15
24 semester hours at the graduate level, or an equivalent combination thereof, including
25 courses covering the subjects of financial accounting, auditing, taxation, and
26 management accounting.
27
- 28 (c) Earned a baccalaureate degree from a business school or college of business that is
29 accredited (level two accreditation) by an accrediting agency recognized by the Board
30 and completed 24 semester hours in accounting at the undergraduate or graduate level,
31 including courses covering the subjects of financial accounting, auditing, taxation, and
32 management accounting; and completed at least 24 semester hours in business courses
33 (other than accounting courses) at the undergraduate or graduate level.
34
- 35 (d) Earned a baccalaureate or higher degree from an accredited educational institution (level
36 one accreditation) including:
37
- 38 (1) at least 24 semester hours of accounting at the upper division or graduate level,
39 including courses covering the subjects of financial accounting, auditing, taxation,
40 and management accounting (An upper division course is normally defined as a
41 course taken at the junior or senior level. In accounting, this would normally be
42 all courses taken beyond the elementary level.); and

- 1 (2) at least 24 semester hours in business courses (other than accounting courses) at
2 the undergraduate or graduate level.

3
4 **Rule 5-3 - Applications for examination.**

- 5
6 (a) Applications to take the Certified Public Accountant Examination must be made on a
7 form provided by the Board and filed with the Board at least 60 days prior to the
8 examination dates.
9
10 (b) An application will not be considered filed until the application fee and examination fee
11 required by these Rules and all required supporting documents have been received,
12 including photographs, official transcripts and proof that the applicant has completed
13 the education requirement.
14
15 (c) An applicant who fails to appear for the examination shall forfeit all fees charged for
16 both the application and the examination.
17

18 **Rule 5-4 - Time and place of examination.**

19
20 Notice of the time and place of the examination shall be mailed at least ten days prior to the
21 date set for the examination to each candidate whose application to sit for the examination has
22 been approved by the Board.
23

24 **Rule 5-5 - Examination subjects.**

25
26 The examination required by Section 5 of the Act shall include the subject areas of accounting
27 and auditing and such related subjects as the Board may require.
28

29 **Rule 5-6 - Cheating.**

- 30
31 (a) Cheating by an applicant in applying for or taking the examination will be deemed to
32 invalidate any grade otherwise earned by a candidate on any part of the examination,
33 and may warrant summary expulsion from the examination room and disqualification
34 from taking the examination for a specified number of subsequent sittings.
35
36 (b) For purposes of this Rule, the following actions, among others, may be considered
37 cheating:
38
39 (1) Falsifying or misrepresenting educational credentials or other information required
40 for admission to the examination;
41
42 (2) Communication between candidates inside or outside the examination room or
43 copying another candidate's answers while the examination is in progress;

(3)	Communication with others outside the examination room while the examination is in progress;	1
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(4)	Substitution of another person to sit in the examination room in the stead of a candidate;	4
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(5)	Reference to crib sheets, text books or other material inside or outside the examination room while the examination is in progress.	7
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(c)	In any case where it appears to the Board, while the examination is in progress, that cheating has occurred or is occurring, the Board may either summarily expel the candidate involved from the examination or move the candidate to a position in the room away from other examinees where the candidate can be watched more closely.	10
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(d)	In any case where the Board believes that it has evidence that a candidate has cheated on the examination, or where a candidate has been expelled from the examination, the Board shall conduct a hearing expeditiously following the examination session for the purpose of determining whether or not there was cheating, and if so what remedy should be applied. In such hearings, the Board shall decide:	15
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(1)	Whether the candidate shall be given credit for any portion of the examination completed in that session; and	21
		22
		23
(2)	Whether the candidate shall be barred from taking the examination in future sittings, and if so, for how many sittings.	24
		25
		26
(e)	In any case where the Board permits a candidate to continue taking the examination, it may, depending on the circumstances:	27
		28
		29
(1)	Admonish the candidate;	30
		31
(2)	Seat the candidate in a segregated location for the rest of the examination;	32
		33
(3)	Keep a record of the candidate's seat location and identification number, and the names and identification numbers of the candidates on either side of the candidate; and/or	34
		35
		36
		37
(4)	Notify the AICPA of the circumstances, furnishing the candidate's identification number, so that after the initial grading is completed the candidate's papers can be compared for unusual similarities with the papers of others who may have been involved.	38
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- (f) In any case where a candidate is refused credit for parts of the examination taken, or is disqualified from taking other parts, the Board shall give the candidate a statement containing its findings, the evidence upon which the findings are based, and a notice of the right of the candidate to a formal rehearing by the Board, with right of appeal, pursuant to the procedures provided in Section 12 of the Act. 1
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- (g) In any case where a candidate is refused credit for any part of an examination taken, disqualified from taking any part of the examination, or barred from taking the examination in future sittings, the Board will provide to the Board of Accountancy of any other state to which the candidate may apply for the examination information as to the Board's findings and actions taken. 7
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ARTICLE 6
ISSUANCE OF CERTIFICATES AND RENEWAL OF CERTIFICATES
AND REGISTRATIONS, CONTINUING PROFESSIONAL EDUCATION
AND RECIPROCITY

Rule 6-1 - Applications.

- (a) Applications for initial certificates and for renewal of certificates and registrations pursuant to the Act shall be made on a form provided by the Board and, in the case of applications for renewal, shall be filed no later than 60 days prior to the expiration date set by these rules. Applications will not be considered filed until the applicable fee prescribed in the Rules is received. If an application for renewal is filed late, it shall also be accompanied by the delinquency fee prescribed in the Rules.
- (b) Applications for renewal of certificates or registrations shall be accompanied by evidence satisfactory to the Board that the applicant has complied with the continuing professional education requirements under Section 6(d) of the Act and of these Rules.

Rule 6-2 - Experience required for initial certificate.

The experience ~~in the practice of public accountancy~~ required to be demonstrated for issuance of an initial certificate pursuant to Section 5(i) of the Act shall meet the requirements of this rule.

- (a) ~~This experience shall consist solely of rendering the kinds of services referred to in the definition of the "practice of public accountancy" in Section 3(i) of the Act. Experience may consist of providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax or consulting skills.~~
- (b) The applicant shall demonstrate that all experience was obtained under the direction of a licensee as defined in the Act or under a qualified professional. The Board will also accept equivalent employment experience gained outside the practice of public accountancy where the applicant can demonstrate that the applicant's experience was ~~substantially the same as~~ comparable to the services defined as practicing public accountancy. Acceptable experience shall include employment in industry, government or academia. The Board shall look at such factors as the complexity and diversity of the work.
- (c) One year of experience shall consist of full or part-time employment that extends over a period of no less than a year and no more than three years and includes no fewer than 2,000 hours of performance of services described in subsection (a) above.

Rule 6-3 - Evidence of applicant's experience.

- (a) Any licensee who has been requested by an applicant to submit to the Board evidence of the applicant's experience and has refused to do so shall, upon request by the Board, explain in writing or in person the basis for such refusal.
- (b) The Board may require any licensee who has furnished evidence of an applicant's experience to substantiate the information.
- (c) Any applicant may be required to appear before the Board or its representative to supplement or verify evidence of experience.
- (d) The Board may inspect documentation relating to an applicant's claimed experience.

Rule 6-4 - Continuing professional education requirements for renewal of the certificate or registration.

The following requirements of continuing professional education apply to the renewal of certificates and registrations pursuant to Section 6(d) of the Act.

- (a) ~~An applicant seeking renewal of a certificate or registration shall show that the applicant has completed no less than 120 hours of continuing professional education complying with these Rules during the three-year period preceding renewal, with a minimum of 20 hours in each year.~~ An applicant seeking renewal of a certificate or registration shall demonstrate participation in a program of learning meeting the standards set forth in the Statement on Standards for Continuing Professional Education (CPE) Programs jointly approved by NASBA and AICPA.
- (b) ~~An applicant whose certificate or registration has lapsed shall complete no less than 120 hours of CPE complying with these rules during the three-year period preceding the date of reapplication.~~ An applicant whose certificate or registration has lapsed shall be required to identify and complete a program of learning designed to demonstrate the currency of the licensee's competencies directly related to his or her area of service.

Rule 6-5 - Programs qualifying for continuing professional education credit.

- (a) Standards -- A program qualifies as acceptable continuing professional education for purposes of Section 6(d) of the Act and these Rules if it is a formal program of learning which contributes to the growth in the professional knowledge and professional competence of a licensee. The program must meet the minimum standards of quality of development, presentation, measurement, and reporting of credits set forth in ~~NASBA's National Registry of CPE Sponsors~~ the Statement on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA or such other standards acceptable to the Board.

- (b) Subject Areas -- The Board will accept programs meeting the standards set forth in NASBA's National Registry of CPE Sponsors the Statement on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA or standards deemed by the Board to be comparable thereto.
- (c) A non-resident licensee seeking renewal of a certificate in this state shall be determined to have met the CPE requirement of this rule by meeting the CPE requirements for renewal of a certificate in the state in which the licensee's principal office is located.
- (1) Non-resident applicants for renewal shall demonstrate compliance with the CPE renewal requirements of the state in which the licensee's principal office is located by signing a statement to that effect on the renewal application of this state.
- (2) If a non-resident licensee's principal office state has no CPE requirements for renewal of a certificate, the non-resident licensee must comply with all CPE requirements for renewal of a certificate in this state.

Rule 6-6 - Continuing professional education records.

- (a) ~~Applicants for renewal of certificates or registrations pursuant to the Act shall file with their applications therefor a signed statement of the continuing professional education programs for which they claim credit, showing:~~
- ~~(1) Sponsoring organization;~~
- ~~(2) Location of program;~~
- ~~(3) Title of program or description of content;~~
- ~~(4) Dates attended; and~~
- ~~(5) Hours claimed.~~
- (b) ~~Responsibility for documenting the acceptability of the program and the validity of the credits rests with the applicant. Such documentation should be retained for a period of five years after the completion of the program. Such documentation may consist of the following:~~
- ~~(1) Copy of the outline prepared by the course sponsor along with the information required by subsection (a);~~

~~(2) For courses taken for scholastic credit in accredited universities and colleges, evidence of satisfactory completion of the course will be sufficient; for non-credit courses taken, a statement of the hours of attendance, signed by the instructor, is required.~~

~~(3) For formal individual study programs, written evidence of completion.~~

Applicants for renewal of certificates or registrations pursuant to the Act shall file with their applications a signed statement indicating they have met the requirements for participation in a program of continuous learning as set forth by the Board or contained in the Statement on Standards for Continuing Professional Education (CPE) Programs jointly approved by the NASBA and the AICPA. Responsibility for documenting the acceptability of the program and the validity of the credits rests with the applicant who should retain such documentation for a period of five years following completion of each learning activity.

~~(c)(b)~~ The Board will verify on a test basis information submitted by applicants for renewal of certificates or registrations. In cases where the Board determines that the requirement is not met, the Board may grant an additional period of time in which the deficiencies can be cured. Fraudulent reporting is a basis for disciplinary action.

Rule 6-7 - Hardship exceptions.

The Board may in particular cases make exceptions to the requirements set out in Rule 6-4 for reasons of individual hardship including health, military service, foreign residence, ~~retirement~~, or other good cause.

Rule 6-8 - Interstate reciprocity.

If the substantial equivalency standard set out in Section 23 is not applicable, the Board shall issue a certificate to the holder of a certificate issued by another state provided that the applicant:

- (a) Has successfully completed the CPA examination. Successful completion of the examination means that the applicant passed the examination in accordance with the rules of the other state at the time it granted the applicant's initial certificate.
- (b) Has, in addition to meeting the requirements of subsection (a) satisfied the requirements set out in Section 6(c)(2) ~~(A), (B), or (C)~~ of the Act.
- (c) Has experience of the type required under the Act and these Rules for issuance of the initial certificate.

(d) Has met the CPE requirement pursuant to Section 6(c)(43) if applicable.

Rule 6-9 - International reciprocity.

(a) The Board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a CPA certificate.

(1) The Board may rely on the ~~National Association of State Boards of Accountancy, the American Institute of Certified Public Accountants, or other professional bodies~~ the International Qualifications Appraisal Board for evaluation of foreign credential equivalency.

(2) The Board may accept a foreign accounting credential in partial satisfaction of its domestic credentialing requirements if:

(A) the holder of the foreign accounting credential met the issuing body's education requirement and passed the issuing body's examination used to qualify its own domestic candidates; and

(B) the foreign credential is valid and in good standing at the time of application for a domestic credential.

(b) The Board may satisfy itself through qualifying examination(s) that the holder of a foreign credential deemed by the Board to be substantially equivalent to a CPA certificate possesses adequate knowledge of U.S. practice standards [and the Board's regulations]. The Board may rely on the National Association of State Boards of Accountancy, the American Institute of Certified Public Accountants, or other professional bodies to develop, administer, and grade such qualifying examination(s). The Board will specify the qualifying examination(s) and process by resolution.

(c) An applicant for renewal of a CPA certificate originally issued in reliance on a foreign accounting credential shall:

(1) Make application for renewal at the time and in the manner prescribed by the Board for all other certificate renewals;

(2) Pay such fees as are prescribed for all other certificate renewals;

(3) If the applicant has a foreign credential in effect at the time of the application for renewal of the CPA certification, present documentation from the foreign accounting credential issuing body that the applicant's foreign credential has not been suspended or revoked and the applicant is not the subject of a current investigation. If the applicant for renewal no longer has a foreign credential, the

- applicant must present proof from the foreign credentialing body that the
applicant for renewal was not the subject of any disciplinary proceedings or
investigations at the time that the foreign credential lapsed; and
- (4) Either show completion of ~~120 hours of~~ continuing professional education
substantially equivalent to that required under Rule 6-4 within the three year
period preceding renewal application, or petition the Board for complete or partial
waiver of the CPE requirement based on the ratio of foreign practice to practice
in this State.
- (d) The holder of a CPA certificate issued in reliance on a foreign accounting credential shall
report any investigations undertaken, or sanctions imposed, by a foreign credentialing
body against the CPA's foreign credential.
- (e) Suspension or revocation of, or refusal to renew, the CPA's foreign accounting credential
by the foreign credentialing body may be evidence of conduct reflecting adversely upon
the CPA's fitness to retain the certificate and may be a basis for Board action.
- (f) Conviction of a felony or any crime involving dishonesty or fraud under the laws of a
foreign country is evidence of conduct reflecting adversely on the CPA's fitness to retain
the certificate and is a basis for Board action.
- (g) The Board shall notify the appropriate foreign credentialing authorities of any sanctions
imposed against a CPA.
- (h) The Board may participate in joint investigations with foreign credentialing bodies and
may rely on evidence supplied by such bodies in disciplinary hearings.

ARTICLE 7
PERMITS TO PRACTICE -- FIRMS

Rule 7-1 - Applications.

- (a) Applications by firms for initial ~~permits to practice~~ issuance and for renewal of permits pursuant to Section 7 of the Act shall be made on a form provided by the Board and, in the case of applications for renewal, shall be filed no earlier than [____] months and no later than [____] months prior to the expiration date. Applications will not be considered filed until the applicable fee and all required documents prescribed in these Rules are received. If an application for permit renewal is filed late, it shall also be accompanied by the delinquency fee prescribed in these Rules.
- (b) A sole proprietor may apply simultaneously for a certificate or a renewal of a registration or a certificate and a firm permit.
- (c) Applications shall include the firm name, addresses and telephone numbers of the main office and of any branch offices of the firm in this State, the name of the person in charge of each such branch office, and the names of the partners, shareholders, members, managers, directors and officers practicing in this State.

Rule 7-2 - Notification of changes by firms.

- (a) A firm registered pursuant to Section 7 of the Act shall file with the Board a written notification of any of the following events concerning the practice of public accountancy within this State within thirty (30) days after its occurrence:
- (1) Formation of a new firm;
 - (2) Addition of a partner, member, manager or shareholder;
 - (3) Retirement, withdrawal or death of a partner, member, manager or shareholder;
 - (4) Any change in the name of the firm;
 - (5) Termination of the firm;
 - (6) Change in the management of any branch office in this State;
 - (7) Establishment of a new branch office or the closing or change of address of a branch office in this State; and

(8) The occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the Act or these Rules.

- (b) In the event of any change in legal form of a firm, such new firm shall within thirty (30) days of the change file an application for an initial permit in accordance with these Rules and pay the fee required by these Rules.

Rule 7-3 - Peer Quality review as a condition for renewal of permit.

- (a) The Board may establish procedures to perform the following functions:

- (1) Review of financial statements and the reports of licensees thereon, to assess their compliance with applicable professional standards;
- (2) Improvement of reporting practices of licensees through educational and rehabilitative measures;
- (3) Referrals to the Board of cases requiring further investigation to by the Board or its designees; and
- (4) Verification that individuals in the firm responsible for supervising attest services and signing the accountants' report on financial statements on behalf of the firm meet the experience requirement set out in professional standards.
- (5) Such other functions as the Board may assign to its designees.

- (b) On and after _____, each applicant for renewal of a firm permit to practice under Section 7 of the Act shall furnish in connection with its application, with respect to each office maintained by the applicant in this State, one copy of each of the following kinds of reports, together with their accompanying financial statements, issued by that office during the twelve month period next preceding the date of application, if any report of such kind was issued during such period:

- (1) A compilation report;
- (2) A review report; and
- (3) An audit report; and
- (4) A report of the examination of prospective financial information.

- (c) The Board may also solicit for review reports of licensees and related financial statements from clients, public agencies, banks, and other users of financial statements.

- 1
2 (d) Any documents submitted in accordance with subsection (b) may have the name of the
3 client, the client's address and other identifying facts omitted, provided that the omission
4 does not render the type or nature of the enterprise undeterminable. The identities of
5 the sources of financial statements and reports received by the Board from other than
6 the licensees who issued the reports shall be preserved in confidence. Reports submitted
7 to the Board pursuant to subsection (b), and comments of reviewers and of the Board
8 on such reports or workpapers relating thereto, also shall be preserved in confidence
9 except that they may be communicated by the Board to the licensees who issued the
10 reports.
11
12 (e) The review of financial statements and reports of the licensees thereon shall be directed
13 toward the following:
14
15 (1) Presentation of financial statements in conformity with generally accepted
16 accounting principles;
17
18 (2) Compliance by licensees with generally accepted auditing standards;
19
20 (3) Compliance by licensees with other professional standards; and
21
22 (4) Compliance by licensees with the Rules of the Board and other regulations relating
23 to the ~~practice of public accounting~~ performance of attest services as herein
24 defined.
25
26 (f) In gathering information about the professional work of licensees, the Board may make
27 use of investigators, either paid or unpaid, who are not members of the Board.
28
29 (g) In any instance where the Board finds a deficiency in the professional work of a licensee,
30 it shall advise the licensee in writing of the deficiency. The Board may request the
31 licensee to meet with it to discuss deficiencies. If the Board determines that a report is
32 substandard or seriously questionable, the Board may direct that a review of the
33 workpapers be conducted by an independent reviewer other than the person who
34 performed the review of the report. The findings of any such review of the workpapers
35 shall be transmitted by the reviewer to the Board.
36

37 **Rule 7-4 - Equivalent reviews as a condition for renewal of a permit.**
38

- 39 (a) The requirements of Rule 7-3 shall not apply with respect to any firm which within the
40 three years immediately preceding the application had been subjected to a satisfactory
41 peer quality review conducted in accordance with a peer quality review program
42 approved by the Board.
43

- 1 (b) A ~~Peer Quality~~ Review Oversight Committee shall be appointed by the Board to monitor
2 the equivalent programs and report to the Board that the programs meet the
3 requirements set out in the Act and these Rules. The Oversight Committee shall:
4
5 (1) be composed of individuals who are not members of the Board;
6
7 (2) have full access to the ~~peer quality~~ review process which is subject to oversight;
8
9 (3) provide the Board with the names of those firms which have undergone and have
10 had accepted a ~~peer quality~~ review as well as whether such firms are meeting the
11 terms, conditions, and remedial actions, if any, required by the reviewing
12 organization;
13
14 (4) along with the Board, establish procedures designed to ensure confidentiality of
15 documents furnished or generated in the course of the review.
16
17 (c) The Board shall establish procedures and take all action necessary to ensure that the
18 above materials remain privileged as to any third parties.
19

20 **Rule 7-5 - Ownership of Firms**

21
22 **Any CPA or PA firm as defined in this Act may include non licensee owners provided that:**

- 23
24 **a) At least a simple majority of the ownership interests in terms of financial**
25 **interests and voting rights must belong to licensees of some state.**
26
27 **b) The firm designates a licensee of this state, who is responsible for the proper**
28 **registration of the firm and identifies that individual to the Board.**
29
30 **(c) All non licensee owners are active participants in the CPA or PA firm.**
31
32 **(d) The firm complies with such other requirements as the board may impose.**
33
34

ARTICLE 10
ENFORCEMENT ACTIONS AGAINST LICENSEES

Rule 10-1 - Grounds for enforcement actions against licensees.

The grounds for revocation and suspension of certificates, registrations and permits, and other disciplinary action against licensees, are set out in Section 10 of the Act in both specific and general terms. The general terms of that provision of the Act include the following particular grounds for such disciplinary action:

- (a) Fraud or deceit in obtaining a certificate, registration or permit, within the meaning of Section 10(a)(1) of the Act, includes the submission to the Board of any knowingly false or forged evidence in, or in support of, an application for a certificate, registration or permit, and cheating on an examination as defined in these Rules.
- (b) Dishonesty, fraud or gross negligence ~~in the practice of public accountancy~~, within the meaning of Section 10(a)(5) of the Act, include knowingly, or through gross negligence, making misleading, deceptive or untrue representations in the ~~practice of public accountancy performance of services~~.
- (c) Violations of the Act or of Rules promulgated under the Act, within the meaning of Section 10(a)(6) of the Act, include--
 - (1) ~~Practicing public accountancy~~ Using the CPA designation or providing attest services in this State prior to obtaining without a certificate, registration or permit to practice; issued under Section 6 and 7 or without properly qualifying to practice across state lines under the substantial equivalency provision of the Act.
 - (2) Using or attempting to use a certificate, registration or permit which has been suspended or revoked;
 - (3) Making any false or misleading statement, in support of an application for a certificate, registration or a permit filed by another;
 - (4) Failure of a licensee to provide any explanation requested by the Board regarding evidence submitted by the licensee in support of an application filed by another, or regarding a failure or refusal to submit such evidence; and failure by a licensee to furnish for inspection upon request by the Board or its representative documentation relating to any evidence submitted by the licensee in support of such an application;

(5)	Failure to satisfy the continuing professional education requirements set out in Section 6(d) of the Act and/or failure to comply with the continuing education requirements of these Rules; or	1
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(6)	<u>Failure to comply with professional standards as to the attest experience requirement for those who supervise attest engagements and sign reports on financial statements.</u>	5
		6
		7
		8
(6) (7)	Failure to comply with the <u>peer quality</u> review requirement set out in Section 7(<u>gh</u>) of the Act and these Rules.	9
		10
		11
(d)	Conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy <u>perform services</u> , within the meaning of Section 10(a)(10) of the Act, includes:	12
		13
		14
		15
(1)	Adjudication as mentally incompetent;	16
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(2)	Fiscal dishonesty of any kind;	18
		19
(3)	Presenting as one's own a certificate, registration or permit issued to another;	20
		21
(4)	Concealment of information regarding violations by other licensees of the Act or the Rules thereunder when questioned or requested by the Board; and	22
		23
		24
(5)	Willfully failing to file a report or record required by state or federal law; willfully impeding or obstructing the filing of such a report or record, or inducing another person to impede or obstruct such filing by another; and the making or filing of such a report or record which one knows to be false.	25
		26
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	Rule 10-2 - Return of certificate, registration or permit to practice.	30
		31
	Any licensee whose certificate or permit issued by the Board is subsequently suspended or revoked shall promptly return such certificate, registration or permit to the Board.	32
		33

ARTICLE 11
ENFORCEMENT PROCEDURES -- INVESTIGATIONS

Rule 11-1 - Review of professional work product.

The Board may solicit and receive publicly available reports of licensees and related financial statements from clients, public agencies, banks, and other users of financial statements on a general and random basis without regard to whether an application for renewal of the particular licensee is then pending or whether there is any formal complaint or suspicion of impropriety on the part of any particular licensee; and it may review such reports and otherwise proceed with respect to the results of any such review in the fashion prescribed in Rule 7-3.

ARTICLE 12
ENFORCEMENT PROCEDURES -- HEARINGS BY THE BOARD

Rule 12-1 - Complaints and notices of hearing.

- (a) A complaint issued by the Board pursuant to Section 12(a) of the Act will include --
- (1) A statement of matters asserted or charged; and
 - (2) References to any particular sections of the Act or of the Rules which are asserted to have been involved in unlawful conduct.
- (b) When the complaint and notice of hearing are served pursuant to Section 12(a) of the Act, they will be accompanied by --
- (1) A copy of the Board's Rules under this Article 12;
 - (2) A copy of Section 12 of the Act;
 - (3) A copy of any particular sections of the Act or of any Rule asserted to have been violated; and
 - (4) A brief statement calling attention to the rights of the licensee, under the Act and the Rules, to examine reports and evidence in advance of the hearing; to appear by counsel at the hearing to present evidence; and to appeal an adverse decision.

Rule 12-2 - Examination and copying of documents.

Under Section 12(b) of the Act a licensee respondent has the right in advance of the hearing to examine and copy any report of investigation and documentary or testimonial evidence and summaries of evidence in the Board's possession relating to the subject matter of the complaint. The right of examination may be exercised by the respondent or the respondent's attorney or agent at the Board's office where the records in question are kept, during regular business hours, on three days' advance notice in writing. Copies will be promptly furnished of any documents or other materials designated for copying, but the Board may charge a fee for such copying pursuant to these Rules.

Rule 12-3 - Conduct of hearing.

- (a) A hearing under Section 12 of the Act shall be conducted by and shall be under the control of a presiding officer appointed by the Board.
- (b) The order of proceedings shall be as follows:

- (1) Statement and presentation of evidence supporting the complaint by the investigating officer, if any, by a Board member designated for that purpose, or by counsel.**
 - (2) Statement and presentation of evidence of the respondent licensee, in person (or in the case of a firm through a partner, officer, director, member, manager or shareholder) and/or by counsel.**
 - (3) Rebuttal evidence in support of the complaint.**
 - (4) Surrebuttal evidence of the respondent licensee.**
 - (5) Closing statements.**
 - (6) Board decision, which pursuant to Section 12(h) of the Act must be by written vote of a majority of the Board excluding members disqualified under Section 12(d) of the Act to sustain any charge and impose any penalty.**
- (c) The presiding officer, Board members, the respondent and the person presenting the complaint shall have the right to question or examine or cross-examine any witness.**
 - (d) The burden of proof to support a violation of the Act or Rules rests with the Board.**
 - (e) The hearing may be continued with recesses as determined by the presiding officer.**
 - (f) The presiding officer may set reasonable time limits for oral presentation.**
 - (g) Exhibits shall be marked, and preserved along with the stenographic transcript as part of the record of the hearing.**

Rule 12-4 - Evidentiary rules.

- (a) Under Section 12(f) of the Act, the Board is not bound by technical rules of evidence, and in its discretion may consider any evidence of a kind commonly relied upon by reasonably prudent persons in the conduct of their affairs.**
- (b) All such evidence that is offered and not objected to will be received by the presiding officer unless the presiding officer determines that it is irrelevant, immaterial or unduly repetitious.**
- (c) Evidence may be received provisionally, subject to a later ruling by the presiding officer as to its admissibility; but any such ruling must be made before closing statements are heard pursuant to Rule 12-3(b)(5).**

Rule 12-5 - Publication of decisions.

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Decisions by the Board following hearings under Section 12 of the Act will, if they sustain any charge, be made public. Decisions that do not sustain a charge may be made public at the Board's discretion.

**ARTICLE 13
REINSTATEMENT**

Rule 13-1 - Applications for relief from disciplinary penalties.

- (a) A person whose certificate or registration has been revoked or suspended, or a firm whose permit to practice has been revoked or suspended or a person or firm that has been put on probation pursuant to Section 10 of the Act may apply to the Board for modification of the suspension, revocation or probation after completion of all requirements contained in the Board's original order.
- (b) The application shall be in writing; shall set out and, as appropriate, substantiate the reasons constituting good cause for the relief sought, and shall be accompanied by at least two supporting recommendations, under oath, from licensees who have personal knowledge of the activities of the applicant since the suspension or revocation was imposed.

Rule 13-2 - Action by the Board.

- (a) An application pursuant to Rule 13-1 will ordinarily be processed by the Board upon the basis of the materials submitted in support thereof, supplemented by such additional inquiries as the Board may require. At the Board's discretion a hearing may be held on an application, following procedures the Board may find suitable for the particular case.
- (b) The Board may impose appropriate terms and conditions for reinstatement of a certificate, registration or permit or modification of a suspension, revocation or probation.
- (c) In considering an application under Rule 13-1, the Board may consider all activities of the applicant since the disciplinary penalty from which relief is sought was imposed, the offense for which the applicant was disciplined, the applicant's activities during the time the certificate, registration or permit was in good standing, the applicant's rehabilitative efforts, restitution to damaged parties in the matter for which the penalty was imposed, and the applicant's general reputation for truth and professional probity.
- (d) No application for reinstatement will be considered while the applicant is under sentence for any criminal offense, including any period during which the applicant is on court-imposed probation or parole.

**ARTICLE 14
UNLAWFUL ACTS**

Rule 14-1 - Misleading CPA firm names.

A CPA firm name is misleading within the meaning of Section 14 (j~~h~~) of the Act if, among other things:

- (a) The CPA firm name implies the existence of a corporation when the firm is not a corporation;
- (b) The CPA firm name implies existence of a partnership when there is not a partnership (as in "Smith & Jones, C.P.A.s"); ~~or~~
- (c) The CPA firm name includes the name of a person who is neither a present nor a past partner, member or shareholder of the firm; ~~;~~ or
- (d) The CPA firm name includes the name of a person who is not a CPA if the designation "CPAs" is included in the firm name.

Rule 14-2 - Fictitious firm names.

A fictitious CPA firm name (that is, one not consisting of the names or initials of one or more present or former partners, members or shareholders) may not be used by a licensee ~~in the practice of public accounting~~ CPA firm unless such name has been registered with and approved by the Board as not being false or misleading.

Rule 14-3 - Safe Harbor Language

Non licensees should use the following disclaimer language in connection with financial statements to not be in violation of the Act:

"I (we) have prepared the accompanying (financial statements) of (name of entity) as of (time period) for the (period) then ended. This presentation is limited to preparing in the form of financial statements information that is the representation of management (owners).

I (we) have not audited, reviewed or compiled the accompanying financial statements and accordingly do not express an opinion or any other form of assurance on them. I (we) am (are) not licensed by this state to provide those types of services.

APPENDIXES

Appendix A

Legislative Policy (Annotated) American Institute of Certified Public Accountants

1. The public interest warrants the licensing and regulation of persons professing expertise in accounting who perform professional accounting services, including the expression of opinions on financial statements and other information upon which the public necessarily relies.

Protection of the public interest is a basic tenet of society. Good governments, since the beginning of civilization, have enacted laws protecting the health and welfare of the public. These basic human rights are protected, and indeed may only be secure, when the financial resources and economic well-being of society are guarded. Today, financial decisions are made, and resources are allocated, by reference to financial reports and other accounting data. These reports and data must be fair and must be believable. Both qualities are enhanced by the professional certified public accountant's work, and that function needs to be regulated for the public's sake.

The state, under its police power, may pass laws to protect the public against fraud, deception or the consequences of ignorance and incapacity, and may exact the requisite degree of skill and learning of persons in professions and pursuits which affect the public health or welfare, such as accountancy. (Davis v. Allen, 307 S.W.2d 800, Tenn. Ct. App., 1957.)

2. There is no such compelling need for licensing and regulation of persons offering record-keeping and elementary accounting services performed at the instance of, and for the benefit of, employers and clients. Nor is licensing required in connection with the preparation of tax returns because of regulatory and disciplinary authority presently possessed by the Internal Revenue Service and other taxing authorities.

Freedom of enterprise is a basic concept of American philosophy that must be evaluated against the public's right to protection when determining activities that need to be regulated. There does not appear to be a compelling public interest in restricting the services noted above to licensed persons only. At the same time, courts have held that the expression of opinions on financial statements and data on which credit grantors, government officials, investors, and other third parties may rely, clearly involves the public interest in such a way as to require regulation. Professional accounting services deemed to merit regulation are perhaps well summarized in a 1964 decision of the Tennessee Court of Appeals. The Court said,

The Courts have generally recognized that the practice of public accountancy is a highly skilled and technical ... profession and, as such, may be regulated by the legislature within proper limits.... However, the Courts consistently have held that legislation which prohibits noncertified accountants from practicing the profession of accountancy is

invalid as it infringes upon rights of contract in matters of purely private concern bearing no perceptible relation to the general or public welfare. And, in so doing, the Courts have indicated that bookkeeping and similar technical services--as contrasted with auditing and expressing opinions on financial statements--do not involve a sufficient public interest to permit legislative interference with the normal right of an individual to deal with anyone he chooses.... (State of Tennessee ex rel. State Board of Accountancy v. Bookkeepers Business Service Co., 382 S.W.2d 559, Tenn. Ct. App., 1964.)

Licensure of tax return preparers would be difficult to administer and ineffective. A major disadvantage is that tax authorities would not automatically obtain information about the returns prepared by a licensee. Without such information, it would be difficult to check on the competence or honesty of the return preparer. Moreover, licensure would not prevent improprieties associated with advertising by commercial tax return preparers and tax return preparers who are unethical. Further, the federal government should be given a fair chance to succeed in its current program of testing methods of regulating tax return preparers.

3. The practice of professional accountancy should ultimately be restricted to certified public accountants who have demonstrated competency by passing the Uniform CPA Examination, by fulfilling educational and other requirements, and by continuing to meet professional standards.

The licensure and regulation of professionals should be conducted as a professional function. State Boards of Accountancy have as their responsibility the maintenance of adherence to high technical and ethical standards. In this policing activity, Board members should be qualified to judge whether the licensee's professional activities conform with standards established to protect the public interest.

4. The enactment of a regulatory accountancy law is not intended to deprive persons who are practicing public accounting as principals at the time of passage of the law of their means of livelihood, and they should be permitted to register as public accountants and become subject to regulation. All further registration or licensing to practice public accountancy should be limited to persons demonstrating their competence as certified public accountants.

Registration of public accountants is appropriate to protect the interests of those who at the time of the enactment of a law had been entitled to assume the designation "public accountant." However, provision should not be made for additions to the ranks of public accountants. The intention is to protect the constitutional rights of those already engaged in public accounting--not to create a permanent second class of professional accountants. Those who would enter public practice in the future should do so only by satisfying educational and other requirements and by passing the Uniform CPA Examination.

5. The accounting profession serves a broad public interest as evidenced by the similarity of accounting needs in all political jurisdictions. In order that it may serve this interest, uniform

licensing and regulatory requirements should be established, and unnecessary restrictions of a local character should be avoided.

Diversity in requirements for the CPA certificate tends to create confusion over the meaning of the certificate. Further, doubt is raised regarding the comparability of the competence of CPAs. Accounting principles and auditing standards used in the practice of public accounting are national in scope; they are not subject to limitations imposed by geographical boundaries. The preponderance of interstate commerce in our economy makes it necessary for qualified accountants to practice across state borders in response to the needs of the public.

APPENDIX B

STATEMENT ON STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS



American Institute of Certified Public Accountants



National Association of
State Boards of Accountancy

These standards which have already been approved, are inserted here in place of the NASBA Registry standards previously used as Appendix B.

As an initial step in the process of establishing uniform standards for continuing professional education, the AICPA CPE Standards Subcommittee met with NASBA's CPE Sponsor Registry Committee early in 1995 to harmonize the standards for CPE program development, presentation, measurement and reporting. A task force was created to carry out the goal of harmonization of the standards. Members of the task force included representatives from state boards, government, sponsors and developers of CPE, public practitioners, and administrators from AICPA and NASBA.

The purpose of the task force was to harmonize CPE standards for professionals as well as developers and sponsors to assure consistent quality, eliminate differences and reduce the administrative burden. The changes to AICPA's and NASBA's CPE standards to bring them into harmony were not substantive in nature.

NASBA's CPE Advisory Panel and Board of Directors have approved the revised standards. The revised standards were also approved by AICPA's CPE Board of Management and Board of Directors.

AICPA and NASBA are hereby issuing these revised CPE standards jointly. These standards are effective upon issuance. Future interpretations or changes will be approved by both AICPA's and NASBA's CPE committees.

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STATEMENT ON STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

PREAMBLE

The right to use the title "Certified Public Accountant" is granted and regulated in the public interest. The title imposes a duty to maintain public confidence and implies a responsibility to be current in knowledge, skills, and abilities in relevant areas so that quality, competent service is assured. This duty and this responsibility extend to all accounting professionals.

The environment within which the accounting professional functions is more dynamic and demanding today than ever before. The profession is characterized by an explosion of relevant knowledge, a changing and expanding nature, and increasing complexity as a result of advancing technology; globalization of commerce; increasing specialization, proliferating regulations, and the complex nature of business transactions. These conditions require a renewed emphasis on the continuing development of competence among accounting professionals.

Individuals, firms, and regulatory bodies have recognized that the continuing development of competence involves a program of lifelong educational activities. The development of standards for Continuing Professional Education (CPE) activities has been recognized as important and necessary to satisfying the objective of achieving quality in such activities.

The following standards have been broadly stated in recognition of the diversity of practice and experience among accounting professionals. They establish a framework for the development, presentation, measurement, and reporting of CPE programs and thereby help to ensure that accounting professionals receive the quality continuing professional education necessary to satisfy their obligations to serve the public interest.

The uniform adoption of these standards by professional regulatory bodies will assist in assuring consistent quality in an environment of high mobility of participants and great variability in program sponsors.

GENERAL STANDARDS

Standard No. 1. Accounting professionals should participate in programs of learning that maintain or increase their professional competence or do both.

Commentary. The fundamental purpose of CPE is to maintain or increase professional competence or do both. An accounting professional's field of employment does not limit the need for continuing professional education.

A person performing services of a professional nature needs to have a broad range of knowledge, skills, and abilities. Thus, the concept of professional competence should be interpreted broadly. Accordingly, programs contributing to the development and maintenance of nontechnical professional skills should also be recognized as acceptable continuing education.

Acceptable subjects may include accounting and auditing, consulting services, specialized knowledge and applications, management, personal development, and taxation. Other subjects may also be acceptable if they maintain and/or increase the accounting professional's competence.

Standard No. 2. It is the responsibility of each accounting professional to comply with all applicable continuing professional education requirements.

Commentary. An accounting professional may have to meet CPE requirements of a state licensing body, other governmental entities, a membership association, or other organizations or bodies. The professional must meet the highest applicable requirements. Exceptions to such requirements may be granted by the appropriate body for reasons of health, military service, foreign residency, retirement, or other good reason if such reason prohibits compliance with these requirements.

Standard No. 3. CPE program sponsors have a responsibility to comply with all applicable standards.

Commentary. Sound administration, adequate resources, competent supervision, and an effective and supportive organizational structure are necessary elements in the design, development, implementation, and monitoring of CPE programs. For each program sponsor, there should be an identifiable administrator charged with demonstrating compliance with these standards.

When a sponsor works with others to develop, distribute, and/or present CPE programs, the responsibility for ensuring that all standards are met rests with the sponsor. The functions of each party should be identified and documented.

STANDARDS FOR CPE PROGRAM DEVELOPMENT

Standard No. 1. Program developers should state learning objectives and specify the program level.

Commentary. Learning objectives should clearly state what level of knowledge or skill is expected to be achieved by a participant completing a particular program.

Program level descriptions should be informative to potential participants. Examples of descriptions are:

- *Basic* - Covers fundamental principles and skills. This level is for participants with limited or no exposure to the subjects.

- *Intermediate* - Builds on a basic level program in order to relate fundamental principles or skills to practical situations and extend them to a broader range of applications. This level is for participants with some exposure to the subjects.
- *Advanced* - Focuses on the development of in-depth knowledge, a variety of skills, or a broader range of applications. This level is for participants with significant exposure to the subjects.
- *Update* - Provides a general review of new developments. This level is for participants with a background in the subjects who wish to be kept current.
- *Overview* - Develops a broad perspective in a subject area.

Standard No. 2. Program developers should state the prerequisites for education, experience, or both for all programs.

Commentary. All programs should clearly identify prerequisites, including advanced preparation. If no prerequisite or advanced preparation is necessary, a statement to this effect should be made. Prerequisites should be written in precise language so that potential participants can readily ascertain whether they qualify for the program or whether the specified program level is appropriate for them.

Standard No. 3. Program developers should be qualified in the subject matter and be knowledgeable in instructional design.

Commentary. Qualification in subject matter and a knowledge of instructional design may be obtained through appropriate practical experience or education or both. This standard is not intended to require that any individual program developer be both technically competent and competent in instructional design. Its purpose is to ensure that both types of competency are represented in a program's development, whether one or more persons are involved in that development.

Standard No. 4. Program developers should ensure materials are technically accurate, current and sufficient to meet the program's learning objectives. Program developers should specify the instructional methods to be used in the delivery of the material.

Commentary. Program developers should review the course materials periodically to assure that they are accurate and consistent with currently accepted standards relating to the program's subject matter.

Standard No. 5. Program developers should ensure program materials are reviewed by qualified persons other than the persons who developed them, in order to assure that the program is technically accurate, current, and sufficient to achieve the learning objectives. This review should occur before the materials are used.

Commentary. A program should be reviewed by individuals qualified in the subject matter and knowledgeable in instructional design. Any one reviewer need not be competent in both areas, but both aspects of a program should be reviewed. However, it may be impractical to review certain programs, such as lectures given only once. In these cases, more reliance must be placed on the recognized competence of the instructor.

STANDARDS FOR CPE PROGRAM PRESENTATION

Standard No. 1. Program sponsors should inform participants in advance of learning objectives, prerequisites, program level, program content, advance preparation, instructional methods, recommended CPE credit, and relevant administrative policies.

Commentary. In order for potential participants to effectively plan their CPE, the significant features of the program should be disclosed in advance (e.g., brochures or other announcements). When CPE programs are offered in conjunction with non-educational activities, or when several CPE programs are offered concurrently, an appropriate schedule of events indicating those components that are recommended for CPE credit should be made available to participants. The program sponsor's registration policies and procedures should be formalized, published, and made available to participants.

Standard No. 2. Program sponsors should encourage participation only by individuals with appropriate education or experience.

Commentary. This standard also means that participants will be expected to complete any advance preparation. Program sponsors should distribute program materials in a timely manner and encourage participants to complete advance preparation requirements.

Standard No. 3. Program sponsors should ensure instructors are qualified with respect to both program content and instructional methods used.

Commentary. The instructor is a key ingredient in the learning process in any group program. Therefore, it is imperative that program sponsors exercise great care in selecting qualified instructors for all group programs. Qualified instructors are those who are capable through background, training, education, or experience of communicating effectively and providing an environment conducive to learning. They should be competent and current in the subject matter, skilled in the use of the appropriate instructional methods, and prepared in advance.

Program sponsors should evaluate the instructor's performance at the conclusion of each program to determine the instructor's suitability to serve in the future.

Standard No. 4. Program sponsors should ensure that the number of participants and physical facilities are appropriate for the instructional methods specified by the developer.

Commentary. The number of participants, quality of facilities, and seating arrangements are integral and important aspects of the educational environment and should be carefully controlled.

Standard No. 5. Program sponsors should employ an effective means for evaluating program quality with respect to content and presentation.

Commentary. The objectives of evaluation are to increase subsequent program effectiveness and to assess participant satisfaction with the specific program. Written evaluations should be solicited from all participants and instructors for each specific session. At a minimum, each program presentation, including self-study, should be evaluated to determine whether:

- Stated learning objectives were met.
- Prerequisite requirements were appropriate.
- Program materials contributed to the achievement of the learning objectives.
- Program content was timely and relevant.
- Time allocations were appropriate.

In addition, each presentation of a group program should be evaluated to determine whether:

- Individual instructors were effective.
- Facilities were appropriate.
- Hand-out or advance preparation materials were satisfactory.
- Audiovisual materials were effective.

Program sponsors should periodically review evaluation results to assess program effectiveness and inform developers and instructors of evaluation results.

STANDARDS FOR CPE PROGRAM MEASUREMENT

Standard No. 1. Continuing professional education credit should be recommended only for programs of learning that maintain or increase the professional competence of the individual.

Commentary. A program of learning is a process that is designed and intended as an educational activity and that complies with these standards. Generally, CPE credit should not be allowed for attending committee or staff meetings because meetings are normally designed for other objectives related to managing the organization. However, a part of a meeting that is a program of learning and complies with these standards would qualify for CPE credit.

A self-study program that primarily involves reading a publication and passing a test on the contents of the publication would not be considered a program of learning. However, a program that includes the reading of a publication could be designed to qualify as a program of learning by complying with each of the CPE standards.

Standard No. 2. All programs should be measured in fifty-minute contact hours. The shortest program for CPE credit purposes should consist of one contact hour.

Commentary. The purpose of this standard is to develop uniformity in the measurement of CPE programs. A contact hour is fifty minutes of participation in a group program. Under this standard, credit is granted only for full contact hours. For example, a group program

lasting one hundred minutes would count for two contact hours; however, one lasting between fifty and one hundred minutes would count for one contact hour. For programs in which individual segments are less than fifty minutes, the sum of the segments should be considered one total program. For example, five thirty-minute presentations would equal one hundred fifty minutes and should be counted as three contact hours.

Program sponsors are encouraged to monitor group programs in order to accurately assign the appropriate number of contact hours for participants who arrive late or leave early.

Self-study programs should be pretested to determine average completion time. Interactive self-study programs (see definition) should receive CPE credit equal to the average completion time. Non-interactive self-study programs (see definition) should receive CPE credit equal to one-half of the average completion time. For example, an interactive self-study program that takes an average of eight hundred minutes to complete should be recommended for sixteen contact hours of CPE credit. A non-interactive self-study program that takes an average of eight hundred minutes to complete should be recommended for eight contact hours of CPE credit.

Program developers should keep appropriate records of how the average completion time was determined.

For university or college courses that meet these CPE Standards, each unit of credit shall equal the following CPE contact hours:

Semester System: 15 hours

Quarter System: 10 hours

Credit is not granted to participants for preparation time.

Standard No. 3. Instructors or discussion leaders should be given CPE credit for their preparation and presentation time to the extent the programs increase their professional competence and qualify for CPE credit for participants. Credit for instructors or discussion leaders should be measured in contact hours.

Commentary. Instructors and discussion leaders should receive CPE credit for both preparation and presentation. The first time they present a program, they should receive credit for actual preparation hours up to two times the number of presentation hours. For example, if a program is presented for eight contact hours, the instructors could receive up to twenty-four contact hours of credit (sixteen contact hours for preparation and eight contact hours for presentation). For repeat presentations, instructors should receive no credit unless they can demonstrate that the program content involved was substantially changed and such change required significant additional study or research.

In addition, the maximum credit for preparation and presentation should not exceed fifty percent of the total CPE credit required in a reporting period. For example, if an instructor's requirement is forty contact hours of CPE every year, the maximum credit that could be claimed would be twenty contact hours. (If the instructor actually taught eight hours and took

sixteen hours to prepare, the most credit that could be claimed would be twenty hours during that period.)

Standard No. 4. Writers of published articles, books, or CPE programs should be given CPE credit for their research and writing time to the extent this time increases their professional competence.

Commentary. Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. For the writer to receive CPE credit, the article, book, or CPE program must be formally reviewed and published by a publisher not under the control of the writer. Credit for writers should be measured in contact hours and not exceed 25 percent of the CPE credit required in a reporting period.

The writer should document the claim for CPE credit with (1) a copy of the publication (or in the case of a CPE program, course development documentation) that names the writer as author or contributor and (2) a statement from the writer supporting the number of CPE hours claimed.

STANDARDS FOR CPE PROGRAM REPORTING

Standard No. 1. Participants in programs of learning should document their participation, including: (1) program sponsor, (2) title and description of content, (3) date, (4) location, and (5) number of CPE contact hours. Evidence of completion should be retained for an appropriate period.

Commentary. This standard is designed to require participants to document their claim of continuing professional education credit. Acceptable evidence of completion includes:

- For group programs, a certificate or other verification supplied by the program sponsor.
- For self-study programs, a certificate supplied by the program sponsor after satisfactory completion of a workbook or examination.
- For a university or college course that is successfully completed for credit, a record of the grade the participant received.
- For instruction credit, evidence obtained from the program sponsor of having been the instructor or discussion leader at a program.
- For published articles, books, or CPE programs, evidence of publication. (See Program Measurement Standard No. 4)

In the absence of legal or other requirements, a reasonable policy would be to retain documentation for five years from the date the program is completed.

Standard No. 2. In order to support the reports that may be required of participants, the program sponsors should retain the following information for an appropriate period: (1) record of participation, (2) copy of the program materials, (3) date, (4) location, (5) instructors, (6)

number of CPE contact hours, (7) results of program evaluations, and (8) evidence of compliance with responsibilities set out under these standards.

Commentary. Because participants may come from any state or jurisdiction, the appropriate amount of time for retention of this information is not dependent solely on the location of the program or program sponsor. Therefore, program sponsors should retain this information for a period of five years from the date the program is completed.

The record should reflect the CPE credit hours earned by each participant, including those who arrived late or left early.

GLOSSARY

Accounting Professional. One who provides accounting or consulting services under circumstances where there is an expectation of public confidence in such services. Thus, those practicing accounting either in firms or as individual Certified Public Accountants, or those accountants employed in industry, government, and education, would generally be considered accounting professionals. With respect to firms of CPAs, the term *accounting professional* may extend to other persons employed to provide client services, including but not limited to noncertified accountants, auditors, actuaries, engineers, and other management consultant professionals.

Contact Hour. Fifty minutes of participation in a group program or interactive self-study program. One hundred minutes of participation in a non-interactive self-study program.

Continuing Professional Education (CPE). An integral part of the lifelong learning required to provide competent service to the public; the set of activities that enables accounting professionals to maintain and increase their professional competence.

Group Program. An educational process designed to permit a participant to learn a given subject through interaction with an instructor and other participants.

Instructional Design. A plan that specifies the learning objectives of the program; the content of the program; the instructional methods; and, if practical, the manner of evaluating whether the learning objectives were achieved.

Instructional Methods. The delivery strategies used in group or self-study programs such as case studies, computer assisted learning, lectures, group participation, programmed instruction, teleconferencing, use of audiovisual aids, or work groups.

Learning Objectives. Specifications of what participants are expected to be able to perform as a result of completing a CPE program. They also help program developers decide on the appropriate instructional methods and determine how much time to devote to certain subjects in the program.

Pretesting. The term “pretest” is used to measure the average completion time from which the recommended CPE credit is determined. The average completion time is determined in order to enable program sponsors to inform participants of the recommended CPE credit.

A sample of the targeted participant population should be selected for pretesting the program materials. Care should be taken to ensure that the sample group has the appropriate level of knowledge prior to taking the program. The sample group selected should be independent of the program development group. The sample size should be sufficient to obtain consistency and reliability of observations. However, it does not have to be a statistically valid sample. The pretest should simulate the environment and manner in which the program is expected to be completed by participants.

Prior to the pretest, the program materials should be reviewed for technical accuracy, currency, and sufficiency to achieve the learning objectives. If substantive changes are subsequently made to program materials, consideration should be given to further pretests of the revised program materials to affirm or amend, as appropriate, the average completion time. Further, program evaluations obtained from participants to assess the quality of the program should address the reasonableness of the program completion time.

Program developers should keep appropriate records to document the following: when the pretest was conducted; the target participant population; how the sample was determined; names and profiles of sample participants; a summary of participants' actual completion time; and the calculation of the recommended CPE credit, taking into account whether the program is interactive or non-interactive.

Professional Competence. Having requisite knowledge, skills, and abilities to provide quality services as defined by the technical and ethical standards of the profession.

Program Developer. The individual or organization responsible for setting learning objectives, creating program materials to achieve such objectives, and maintaining the records required by these standards.

Program of Learning. A process that is designed and intended as an educational activity and that complies with these standards.

Program Sponsor. The organization responsible for presenting a program to the final users and maintaining the records required by these standards.

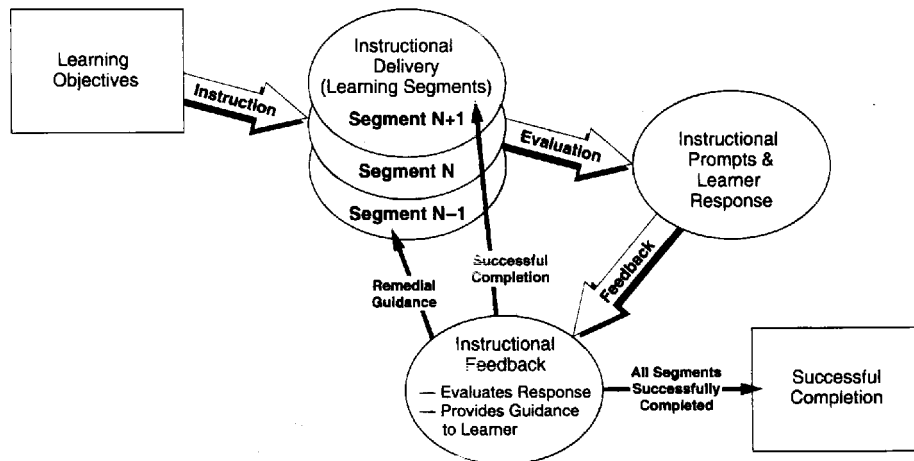
Self-Study Program. An educational process designed to permit a participant to learn a given subject without major involvement of an instructor. There are two types of self-study programs, interactive and non-interactive.

A. **Interactive Self-Study Program.** A program designed to use interactive learning methodologies that simulate a classroom learning process by employing software, other courseware, or technology-based systems that provide significant ongoing, interactive feedback to the participant regarding his or her learning progress. Evidence of satisfactory completion of each program segment by the participant is often built into such programs.

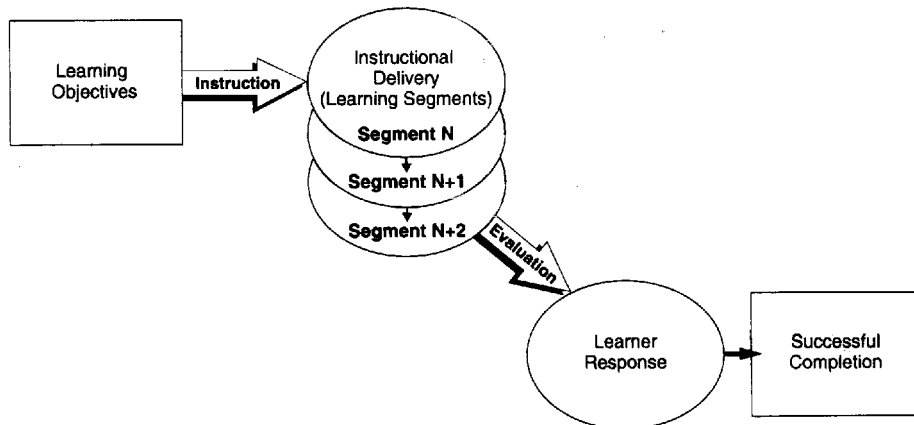
These programs clearly define lesson objectives and manage the participant through the learning process by (1) requiring frequent participant response to questions that test for understanding of the material presented, (2) providing evaluative feedback to incorrectly answered questions, and (3) providing reinforcement feedback to correctly answered questions. Therefore, capabilities are used that, based on participant response, provide appropriate ongoing feedback to the participant regarding his or her learning progress through the program.

Technology-based self study programs do not constitute interactive programs per se; they must meet the criteria set forth in the definition of interactive self-study programs. The following diagrams contrast the management of participant through the learning process in an interactive self-study program vs. a non-interactive self-study program.

Interactive Self-Study Programs



Non-Interactive Self-Study Programs



- B. **Non-Interactive Self-Study Program.** Any self-study program that does not meet the above criteria for interactive self-study programs.

APPENDIX C

Substantial Equivalency

Introduction

This appendix sets out guidelines with regard to the substantial equivalency standard that will be administered by the NASBA Qualification Appraisal Service. In determining whether there is substantial equivalency, the keynote is flexibility. The criteria is whether the broad outlines and concepts in this Act have been satisfied rather than a “checkmark” approach that examines whether the state’s law includes all of the detailed provisions in the UAA. Any other approach would not carry out the intention of the historic agreement reached by the AICPA and NASBA with regard to the substantial equivalency standard. The goal is to promote mobility for qualified CPAs. Because the substantial equivalency standard is based on the standards set out in the UAA, the standard also protects the public. The sections below provide additional detail with regard to the substantial equivalency standard.

A. Substantially Equivalent States

The criteria for determining whether a state’s CPA qualification requirements are substantially equivalent to the UAA include: good character, completion of the 150 hour education requirement, passage of the Uniform CPA examination and compliance with a one year general experience requirement. A state will be considered substantially equivalent as long as the effective implementation date for the 150 hour education requirement is to occur within six years after the date on which the requirement is enacted.

B. Individuals from States that are not Substantially Equivalent

Individual CPAs who personally meet the substantial equivalency standard can personally apply for and utilize the standard even if the CPA qualification requirements in their state are not substantially equivalent. This will maximize mobility for qualified professionals. In reviewing individual applicants, the Qualifications Appraisal Service should utilize the same flexible approach that is used with regard to determining whether a state is substantially equivalent to the UAA. For those who cannot use the substantial equivalency standard, if they have four years of experience of the type outlined in Section 5(i) of the UAA they would be eligible for reciprocity under Section 6(c) of the UAA.

C. Grandfathering

All CPAs licensed as of the date that the state receives its notice of substantial equivalency from the NASBA Qualification Appraisal Service will be eligible to use the substantial equivalency provision. This will promote the substantial equivalency standard, promote mobility for CPAs and enhance adoption of UAA provisions by the states. Because the CPAs are already

considered competent by their state of licensure , the public is adequately protected under this system of grandfathering CPAs.

With regard to individual applicants to the NASBA Qualification Appraisal Service from nonsubstantially equivalent states, anyone who passed the CPA examination before January 1, 2001 will be eligible personally to obtain substantial equivalency even if they have not completed 150 hours of education. Individuals who pass the Uniform CPA examination after January 1, 2001 must complete the 150 hour education requirement in order to be eligible for substantial equivalency.

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and

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